

SITE VISIT and PREHEARING CONFERENCE  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for Certification of ) Docket No.  
the Tesla Power Plant Project ) 01-AFC-21  
by Florida Power and Light )  
\_\_\_\_\_ )

TRACY COMMUNITY CENTER  
300 E. TENTH STREET  
TRACY, CALIFORNIA

WEDNESDAY, JULY 30, 2003

6:02 p.m.

Reported by:  
Peter Petty  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John Geesman, Presiding Member

HEARING OFFICER, ADVISORS PRESENT

Susan Gefter, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Jack Caswell, Project Manager

Darcie Houck, Staff Attorney

Arlene Ichien

Keith Golden

Dick Anderson

Ila Lewis

Tony Mediati

PUBLIC ADVISER

Major Williams on behalf of the Public Adviser

APPLICANT

Scott A. Galati, Attorney  
Grattan and Galati

Scott A. Busa, Project Director  
Duane McCloud, Technical Manager  
Darrell Grant, Vice President of Western Regional  
Development  
Lanie Budai  
Florida Power and Light Energy

David Stein  
URS

Christopher Hansmeyer, Attorney

Patrick Johnston

APPLICANT

Mac Hay

Dwight R. Mudry, Consulting Scientist  
TetraTech

INTERVENORS

Robert Sarvey

Jim Swaney, Permit Services Manager  
San Joaquin Valley Air Pollution Control District

ALSO PRESENT

Steve Bailey  
City of Tracy

Larry Fragoso, Division Chief  
City of Tracy Fire Department

Stacee Hall

Irene Sundberg

Carole Dominguez

Ena Aguirre

Susan Sarvey  
Clean Air for Citizens and Legal Equality

Paula Buenavista

John Vieira, Chairman  
Tracy Rural Fire Protection District

## I N D E X

	Page
Proceedings	1
Opening Remarks	1
Presiding Member Geesman	1
Introductions	1
Public Adviser	5
Background and Procedural Overview	7
Topics	12
Air Quality	12
Public Questions/Comment	39
Biology	62
Cultural Resources	65
Hazardous Materials	65
Land Use	65
Noise	84
Public Health	89,145
Socioeconomics	92,152
Traffic and Transportation	95
Water Resources	103,143,152
Fire Protection	128
Power Plant Efficiency	146
Transmission System Engineering	147
Alternatives	148

## I N D E X

	Page
Scheduling	149
Closing Remarks	158
Adjournment	158
Reporter's Certificate	159

## P R O C E E D I N G S

6:02 p.m.

PRESIDING MEMBER GEESMAN: My name is

John Geesman. I'm a member of the California Energy Commission; I'm the Presiding Commissioner on the Committee to consider the application for the Tesla Power project submitted by Florida Power and Light.

This is a prehearing conference on Florida Power and Light's application for certification of the Tesla Power project. The Energy Commission accepted the application for review on January 9, 2002.

The Commission Staff recently published its independent staff assessment which raises issues with the project that we'll discuss today. But first we'll take introductions. The Commission has assigned a Committee of two Commissioners to conduct the proceedings on this application. I am one of those two members. Commissioner Art Rosenfeld is the Second Member. He, unfortunately, will not be able to join us today.

The most important person in the process is to my right, Susan Gefter, the Hearing Officer

1 for the Committee. And she will be conducting the  
2 actual proceedings. I'd like to turn it over to  
3 her now.

4 HEARING OFFICER GEFTER: First we would  
5 ask the parties to identify themselves for the  
6 record, beginning with the applicant.

7 MR. BUSA: Good evening; my name is  
8 Scott Busa. I'm the Project Director for the  
9 Tesla Power project with FPL Energy.

10 MR. GALATI: And I'm Scott Galati  
11 representing the applicant.

12 HEARING OFFICER GEFTER: You also have  
13 other representatives in the audience today?

14 MR. BUSA: Yes, we've got several  
15 representatives from FPL Energy. Vice President  
16 of Development of the Western Region, Derrel  
17 Grant, --

18 HEARING OFFICER GEFTER: Ask them to  
19 stand up or, you know, so -- thank you.

20 MR. BUSA: Our Project Engineer, Duane  
21 McCloud. And I've got several contractors. Do  
22 you want me to identify them, too?

23 Chris Hansmeyer, who is a water  
24 attorney; Patrick Johnston, the next one there,  
25 who is a governmental affairs consultant; Lanie

1 Budai with FPL Energy's Corporate Communications  
2 Group. And I know we have Mac Hay, also one of  
3 our governmental affairs consultants. He's hiding  
4 in the kitchen, I believe. Dr. Dwight Mudry with  
5 TetraTech, who is our lead environmental  
6 consultant. David Stein with URS; he is the air  
7 consultant.

8 I think that's everybody.

9 HEARING OFFICER GEFTER: That's good for  
10 now. Thank you very much. And now we'll hear  
11 from staff.

12 MR. CASWELL: I'm Jack Caswell, Project  
13 Manager for the California Energy Commission,  
14 assigned to this Tesla project.

15 MS. HOUCK: Darcie Houck, Staff Counsel,  
16 assigned to this project.

17 HEARING OFFICER GEFTER: And, Ms. Houck,  
18 could you please identify other members of staff  
19 who are in the audience and ask them to stand,  
20 please.

21 MS. HOUCK: We have Ila Lewis here; she  
22 is the compliance -- she will be the compliance  
23 manager. We have Tony Mediati and Dick Anderson  
24 from our water unit. Eileen Allen from our land  
25 use unit is also here. And Keith Golden from our



1 air unit. Also Steve Bailey from the City of  
2 Tracy is here, as well, regarding water issues.

3 HEARING OFFICER GEFTER: Okay, and --

4 MS. HOUCK: Arlene Ichien, our Assistant  
5 Chief Counsel, is also present, but I don't see  
6 her in the room.

7 HEARING OFFICER GEFTER: Okay, thank  
8 you. And also we have an intervenor, Mr. Bob  
9 Sarvey, here. Mr. Sarvey, do you want to  
10 introduce yourself for the record.

11 MR. SARVEY: Bob Sarvey representing my  
12 family.

13 HEARING OFFICER GEFTER: Okay, are there  
14 any other intervenors present today? Yes, please,  
15 why don't you come up to the microphone over here.  
16 Push the button to make sure it's on.

17 MR. SWANEY: I'm Jim Swaney representing  
18 the San Joaquin Valley Air District.

19 HEARING OFFICER GEFTER: Thank you, glad  
20 to see you tonight. Is there any other  
21 representative of a local governmental agency, or  
22 fire department?

23 CHIEF FRAGOSO: Larry Fragoso, Tracy  
24 Fire Department.

25 HEARING OFFICER GEFTER: Thank you. I'm

1 glad you're here this evening. Any other  
2 representative from a local governmental agency  
3 here tonight?

4 Okay, thank you.

5 So we don't have anyone from the Bay  
6 Area Air District? All right.

7 The Energy Commission also has a Public  
8 Adviser who is an independent entity who is  
9 available to assist the public in participating in  
10 our proceedings. And this evening, Roberta  
11 Mendonca, who is our Public Adviser, was  
12 unavailable this evening, but Major Williams, who  
13 is wearing her hat this evening, and he can tell  
14 us what Ms. Mendonca has been doing to contact the  
15 community and to let you know about this project.

16 Mr. Williams.

17 MR. WILLIAMS: Thank you. I'm sure some  
18 of you all recognize me from East Altamont. I'm  
19 actually wearing a different hat today. And you  
20 might see me in a different hat at another time.  
21 But, welcome.

22 As you know, or if you don't know, the  
23 Tesla Power project is an 1100 megawatt combined  
24 cycle generation project using natural gas. Gas  
25 turbines, of course, heat recovery system, steam

1 generators, two steam turbine generators.

2 We just went out to the site and we saw  
3 that it's a 60-acre parcel in Alameda County just  
4 north of the PG&E Tesla substation, and just west  
5 of the San Joaquin County line.

6 Roberta's office has published in the  
7 local newspaper this meeting, and circulated  
8 petitions, as well, to let folks in the local  
9 community know about our meeting here today. So,  
10 there should be no surprises in that regard.

11 Roberta will be back for our next  
12 meeting more than likely. She's taking a short  
13 vacation.

14 I would just ask that everyone who wants  
15 to get continued notices on the project to sign up  
16 on the mailing list at the table in the back.  
17 Make sure your name is on there, and I'll make  
18 sure that gets to Roberta's office so you'll get  
19 continued notices concerning the project.

20 Also, if you want to speak here today  
21 about the project, as a member of the public, make  
22 sure you fill out a blue card and give it to me.  
23 And I'll make sure that Susan gets it, and she'll  
24 call you up at the appropriate time and you can  
25 make your public comment.

1           If you prefer not to come to the mike  
2           and make a public statement there's a form back  
3           there that you can fill out and put your comments  
4           on the form. And I'll read it, if you'd like me  
5           to do that. I certainly will do that.

6           So, it's your choice, but just either  
7           fill out a blue card or fill out a comment form.

8           And if you see something that you might  
9           want, a map -- I know I spoke to one lady already  
10          about wanting a map of the project. I don't have  
11          that material, but speak to either Jack Caswell,  
12          who's staff's project manager; and he'll make sure  
13          that you get whatever information you need. Or  
14          Mr. Scott Busa, who is the project manager for the  
15          applicant. Between the two of those guys you will  
16          definitely get whatever you need. Okay?

17          So, with that, if I can help anybody, if  
18          you have any questions about procedure or process  
19          here today, just come on back and talk to me, and  
20          I'll try to guide you through it and answer your  
21          questions. Okay? All right.

22          Thank you, Susan.

23          HEARING OFFICER GEFTER: Thank you. So  
24          what we're going to do right now is discuss the  
25          process real quickly, and then we'll move on.

1           As everybody knows, the FPL filed an  
2       application to build the 1100 megawatt Tesla Power  
3       project back in October of 2001. Since that time  
4       the staff and the applicant have conducted --  
5       there have been several workshops here in the  
6       Tracy area. And staff subsequently issued a final  
7       staff assessment in April of this year.

8           And then staff also filed an addendum to  
9       the staff assessment on July 17th to address the  
10      environmental impacts of staff's proposed  
11      reclaimed water pipeline. And those documents are  
12      available online on the Commission's website. And  
13      I also believe that Mr. Caswell put several copies  
14      out on the table in the back. If people want  
15      copies of these staff assessments either look on  
16      the back table or talk with Mr. Caswell after the  
17      hearing.

18           This is a prehearing conference which is  
19      a more formal proceeding than a workshop. We're  
20      getting ready to take evidence at what we call  
21      evidentiary hearings. And this is the opportunity  
22      for the parties to discuss their disputes or their  
23      agreements; and an opportunity for the Committee,  
24      myself and Commissioner Geesman, to ask questions  
25      of the parties to help everyone prepare for the

1       evidentiary hearings.

2               And as Mr. Williams indicated, we will  
3       provide time for the public to ask questions, as  
4       well.

5               The first thing to open the prehearing  
6       conference the parties were required to file  
7       prehearing conference statements which indicate  
8       which topics are still disputed in this case.

9               As indicated by the parties, the staff  
10      and the applicant dispute the topics of air  
11      quality and water resources. In particular, staff  
12      is recommending that the applicant use wastewater  
13      from the City of Tracy wastewater treatment plant.  
14      And the applicant has another proposal that  
15      they've already, I'm sure, addressed. And they  
16      will have an opportunity to bring that up tonight.

17              There's also a dispute between the  
18      applicant and the staff on air quality mitigation.  
19      And we'll hear about that later, as well.

20              Intervenor Bob Sarvey and also Mike  
21      Boyd, who represents the Californians for  
22      Renewable Energy, is also an intervenor, and  
23      indicated that they have disputes with several  
24      issues in this case. And specifically the air  
25      quality, public health, biology, water resources,

1       socioeconomics, fire protection and land use.

2               And those are topics again discussed in  
3       the staff assessment. And we'll ask Mr. Sarvey to  
4       summarize the concerns he has in a few minutes.

5               With respect to undisputed issues, and  
6       there are a number of those, as well, surprise,  
7       surprise, particularly in the engineering area.  
8       The parties have requested not to bring in live  
9       witnesses to testify, but to submit what we call  
10      declarations, which would be statements under  
11      penalty of perjury that the testimony submitted by  
12      those particular witnesses is true and that we can  
13      rely on that testimony.

14              And we will allow the parties to submit  
15      that testimony by declaration unless another party  
16      wishes to cross-examine those witnesses. And we  
17      will talk about that, again, too, because that's  
18      rather technical and legal.

19              What we will do is we will establish a  
20      deadline for the parties to indicate whether they  
21      wish to cross-examine those witnesses in a hearing  
22      order which will come out after this meeting  
23      tonight.

24              The one thing that I wanted to state at  
25      the outset is that we will request the applicant

1 to provide witnesses on project description at the  
2 evidentiary hearing, because that will set the  
3 context for understanding what the project is  
4 about. It describes the parameters of the project  
5 that we can then go forward and work with for the  
6 rest of the topics that we look at.

7 What we're going to do today is go  
8 topic-by-topic and talk about the concerns that  
9 the parties have raised. So it could be a long  
10 and tedious and technical process. But if members  
11 of the public had questions on a particular topic,  
12 I think we will take those questions as we go  
13 through, because I think that number one is air  
14 quality and that's going to be where we start  
15 tonight.

16 And I know there were some questions  
17 raised during the site visit and will you be  
18 allowed to come forward and ask specific  
19 questions. We're not going to spend a lot of  
20 time, though, because we need to move through a  
21 lot of topics tonight. So we don't want to hear  
22 repetitious questions. If one person asks a  
23 question, please don't come up and ask the same  
24 question.

25 And what we will do, first of all, is



1 ask the parties, themselves, whether you have any  
2 question about the format this evening?

3 MR. GALATI: No, we're fine with the  
4 format.

5 HEARING OFFICER GEFTER: Okay, I'm going  
6 to go topic-by-topic. And the first topic is air  
7 quality. And what I want to do is ask the  
8 applicant to indicate where the disputes are and  
9 how much time you're going to need at hearing, and  
10 how many witnesses you expect to present, and  
11 whether you want to cross-examine. And then we'll  
12 ask the same questions of staff and Mr. Sarvey.

13 MR. GALATI: We have no changes in our  
14 air quality from our prehearing conference  
15 statement. We believe we need one hour of direct  
16 testimony from one witness, David Stein. And we  
17 may need up to two hours to cross-examine the  
18 staff witness and 15 minutes to either direct or  
19 cross-examination of the San Joaquin Valley  
20 witness.

21 HEARING OFFICER GEFTER: So, total, how  
22 much time is that, about three and a half hours?

23 MR. GALATI: Yeah, and again, our cross-  
24 examination estimate is probably the greatest  
25 estimate. I also would like to say at the outset

1       that the two issues that the applicant has  
2       identified disagreement with staff on are air  
3       quality and soil and water resources.

4               One of the things we were hoping to be  
5       able to accomplish was being able to form some  
6       sort of agreement with staff on air quality, on an  
7       air quality condition that would be, I would say,  
8       similar to what was done in East Altamont.

9               So, we would be proposing that in our  
10       testimony. And we would hope that that would  
11       eliminate the need for a lot of the cross-  
12       examination of staff witnesses.

13              So the times I'm giving you for air  
14       quality would be worst case scenario.

15              HEARING OFFICER GEFTER: And staff?

16              MS. HOUCK: Staff was submitted its  
17       testimony in the final staff assessment. We  
18       reviewed the applicant's prehearing conference  
19       statement. And they've indicated, as Mr. Galati  
20       stated, that they would like to see conditions  
21       similar to those in the East Altamont Energy  
22       Center. At this point there's not a final  
23       decision in that case.

24              Staff would like to see what applicant  
25       has in mind; exactly what condition they're

1 proposing. It's my understanding that when  
2 applicant files its testimony it's also going to  
3 file proposed conditions. And staff would have to  
4 look at those proposed conditions before it could  
5 enter into any further discussions possibly  
6 settling this.

7 But we are interested in seeing what the  
8 applicant has to provide. And without seeing that  
9 testimony, though, I feel uncomfortable indicating  
10 where we're going to go.

11 Also, the estimate that staff gave  
12 regarding the three hours of cross-examination of  
13 the applicant's witness is the absolute worst case  
14 scenario. We don't anticipate using that much  
15 time. And we will have a better estimate once  
16 we've seen the applicant's testimony.

17 PRESIDING MEMBER GEESMAN: Let me ask  
18 both of you whether either of you are able to  
19 really go forward on the air quality issue before  
20 the Commission makes a final determination in East  
21 Altamont.

22 MR. GALATI: I think we are. I think  
23 that what the Commission has done so far in East  
24 Altamont has provided us, I think, enough of a  
25 framework to come a lot closer to staff.

1           When staff proposed in its final staff  
2           assessment and what the framework for East  
3           Altamont are somewhat different, so I think we're  
4           much much closer.

5           MS. HOUCK: I think we can also go  
6           forward. I would like to ask for clarification.  
7           It's my understanding from the prehearing  
8           conference statement the only condition that's  
9           really at issue is air quality SC-7, is that  
10          correct?

11          MR. GALATI: You know, I believe so.  
12          What we're talking about -- is there more than  
13          one, -- I'm going to ask Dave Stein to come up.  
14          He knows the conditions better than I do.

15          (Pause.)

16          MR. GALATI: Yes, it is only the one  
17          condition on the amount of local offsets, local  
18          mitigation. I believe that is condition 7.

19          MS. HOUCK: Okay, thank you.

20          HEARING OFFICER GEFTER: Is there  
21          anything else?

22          MS. HOUCK: No.

23          HEARING OFFICER GEFTER: Okay. I'll ask  
24          Mr. Sarvey if you want to identify what your  
25          dispute is and your witnesses, and how much time

1       you'll need.

2               MR. SARVEY: Well, first of all I'd like  
3       to answer Commissioner Geesman's question. I  
4       think that it would be prudent to wait until we  
5       have a decision at East Altamont.

6               I also think it's necessary for the full  
7       Commission to sit down, as Chairman Keese  
8       suggested at the last business meeting, and decide  
9       how we're going to deal with these issues of power  
10      plants that are located on borders. I think  
11      that's a very prudent way to approach this.

12              I think we're going to do a lot of head-  
13      banging here that's unnecessary. But if the rest  
14      of the parties are willing to do that, I'm willing  
15      to do that, as well.

16              My issues are, first of all, is it right  
17      to site three power plants within six miles of  
18      each other in an area that has air quality as poor  
19      as ours. That's my first thing that I want to  
20      come out of this project.

21              And if it is right, how many more plants  
22      are going to be sited in our area. And I'd like  
23      to get an answer to that before the proceedings  
24      are all over with.

25              I also have an outstanding data request

1 on a cumulative air analysis. I don't feel that  
2 the cumulative air analyses that have been  
3 submitted for this project are adequate. They're  
4 missing several reasonably foreseeable projects,  
5 most notably the Gateway Business Park, the River  
6 Islands project. Our plans see projects that are  
7 several large projects that are permitted and are  
8 underway that are not included in the cumulative  
9 air analysis. So that's an issue I think needs to  
10 be resolved, as well.

11 I would like to have a representative  
12 during the evidentiary hearings from the EPA. I  
13 would also like to have someone from the Bay Area  
14 Air Quality Management District. We had a lot of  
15 disputes come up in East Altamont Energy Center.  
16 And I feel that those two people are really  
17 necessary to resolve a lot of the issues that are  
18 going to come up.

19 And I'm sure San Joaquin will be here  
20 participating, as they're an intervenor. So, we  
21 don't need to request them. But I think it would  
22 be very prudent to have somebody from the EPA,  
23 particularly concerning pre-1990 emission  
24 reduction credits when the Bay Area does not have  
25 an approved attainment plan. I think that's a

1 very large issue.

2 One of my other issues is -- and I think  
3 I might have resolved part of this with staff. I  
4 was hoping to bring in the staff expert from the  
5 East Altamont Energy Center. It may not be  
6 necessary, but I suppose we'll discuss that later.

7 And as far as witnesses I don't have any  
8 witnesses in air quality. I'll be relying on  
9 cross-examination of the staff witness for  
10 approximately an hour; the applicant witness for  
11 approximately an hour; the Pollution Control  
12 District for a half hour. And I'm hoping to be  
13 able to question the EPA and the Bay Area, also.

14 HEARING OFFICER GEFTER: We would expect  
15 that a representative from the Bay Area District  
16 would be here. And we'll have to talk about  
17 whether a representative from EPA is necessary.

18 Okay. So we're going to ask the  
19 representative from the San Joaquin Air District  
20 to come forward and indicate whether you intend to  
21 put on testimony and how much time you'll need and  
22 what the issues are.

23 MR. SWANEY: At this point all of our  
24 concerns have been addressed. Our direct  
25 testimony would be limited to no more than 15

1 minutes and that would be either myself or Seyed  
2 Sadredin would be available for cross-examination.

3 HEARING OFFICER GEFTER: Before we go  
4 on, since air quality is a contested issue and I  
5 have several questions on behalf of the Committee  
6 that I would like to see addressed when we get to  
7 evidentiary hearings. You know, there are quite a  
8 few questions. You don't have to give any answers  
9 right away, but hopefully we'll have our  
10 transcripts so that even though, you know, I ask  
11 you to take notes, but perhaps a transcript, when  
12 it's done, will help us get through the questions.

13 The first question I have is the ERC  
14 offset package, under the FDOC issued by the Bay  
15 Area Air District requirements, I haven't seen the  
16 certification from the Bay Area District that the  
17 offset package complies with Public Resources Code  
18 section 25523(d)(2). And we need that letter or a  
19 certification from the Air District in order for  
20 us to get to the end of the process.

21 Sure, Mr. Golden, do you want to address  
22 that?

23 MR. GOLDEN: Again, my name is Keith  
24 Golden with the CEC air quality staff. It's been  
25 my experience on this certification that, if I



1 recall, this is based on other projects, that at  
2 the time of the hearings a question like this  
3 arises and it's usually broached to the witness  
4 from the Bay Area, or whatever the air district  
5 may be. And they respond orally.

6 I'm not sure that there is specifically  
7 a requirement that this has to be submitted in  
8 writing. And maybe there is; and if there is, we  
9 can certainly, you know, if there's a legal  
10 requirement this has to be in written form we can  
11 forward it on to the Air District for them to  
12 respond to.

13 HEARING OFFICER GEFTER: That can be  
14 settled, you know, as we get closer to evidentiary  
15 hearings. I've been requiring a letter from the  
16 air districts and they've been supplying them.

17 MR. GOLDEN: Okay. So you'd want to see  
18 a letter in writing, right, obviously, writing  
19 from the Air District certifying the credits?

20 HEARING OFFICER GEFTER: Yeah. And  
21 actually, Mr. Golden, if you want to stay there,  
22 because I do have other questions. And you don't  
23 have to answer the question, but you can tell me,  
24 you know, how you're going to get to the answer.

25 In the FSA at page 4.1-36 table 17 is a

1 summary of the Tesla project's offset liability  
2 and the ERC acquisitions. Okay, and then there's  
3 also table 19 which is on page 4.1-40. There are  
4 two tables that I'm looking at here.

5 Okay, table 17 shows the offset  
6 liability and a list of ERC acquisitions. Table  
7 19 shows what is called the effectiveness of the  
8 ERC acquisitions. And I wanted to know how you  
9 reconcile these two tables, and say how they're  
10 different, and what does it mean when you're  
11 talking about effectiveness of the ERC  
12 acquisitions.

13 MR. GOLDEN: Okay, --

14 HEARING OFFICER GEFTER: You don't have  
15 to answer it tonight, but I do need an answer,  
16 because it's a --

17 MR. GOLDEN: At the hearings then you'll  
18 be querying about this, okay.

19 HEARING OFFICER GEFTER: Okay. In  
20 addition I want to know whether these two tables  
21 represent the total ERC package under the Bay  
22 Area's requirements.

23 MR. GOLDEN: Okay.

24 HEARING OFFICER GEFTER: And then there  
25 is an ERC at page 4.1-36, again go back to that

1 page. It says that an ERC for PM10 is near a  
2 landfill created by paving three roads. And  
3 that's proposed. And I'm curious about how does  
4 that, the paving of roads apparently is not  
5 something that the Air Resources Board is  
6 approving these days.

7 And so whether -- is this still one of  
8 the ERCs in this project, still one of the  
9 offsets? And if that's that case, how does that  
10 conform with what the Air District -- the Air  
11 Resources Board is saying about road paving not  
12 being acceptable mitigation? So, again, you can  
13 answer that one.

14 MR. GALATI: If I could just respond to  
15 that because I mean no disrespect, I don't believe  
16 that the Air Board says you can't use PM10 road  
17 paving for offsets. And we'd be prepared to put  
18 on evidence of that with our offset.

19 But to answer the question, we are  
20 proposing that ERC to offset this plant.

21 HEARING OFFICER GEFTER: This will be  
22 something we will discuss because there's several  
23 pages in the staff testimony that talks about road  
24 paving, and that staff agrees with the Air  
25 Resources Board's assessment regarding road

1 paving. So we'll talk about that. That would be  
2 an issue that would be either solved before we get  
3 to the hearing, or we'll discuss it at the  
4 hearings.

5 In addition, the air quality mitigation  
6 agreement with the San Joaquin Valley Air District  
7 is referred to at page 4.1-37 in the staff  
8 assessment. And there's also a copy of the  
9 agreement that has been docketed.

10 The question I have, there's several  
11 questions related to that mitigation agreement  
12 which we would have to discuss at the hearings if,  
13 in fact, we -- if it still remains an issue.

14 And the first question is the method  
15 that was used for calculating the fee or the  
16 payment that appears in that agreement. And then  
17 the question is whether that fee is sufficient on  
18 a cumulative basis with looking at the East  
19 Altamont project.

20 In other words you've got East Altamont,  
21 which has an agreement with the San Joaquin  
22 District; and then you have Tesla, which has an  
23 agreement. Is Tesla, this agreement, does that  
24 incorporate a cumulative analysis, given that  
25 Altamont has the same agreement, or agreement with

1 similar terms. And therefore, it's a sufficient  
2 mitigation plan?

3 The other thing that needs to be  
4 addressed is since the San Joaquin Air District  
5 has already approved this agreement, but it  
6 doesn't include a CEQA analysis that shows that a  
7 mitigation plan will mitigate all potential  
8 impacts during the life of the project. And so,  
9 what we're looking at is whether staff did a CEQA  
10 analysis in addition to this agreement.

11 Because in the staff assessment it's not  
12 clear to my reading that staff's CEQA analysis is  
13 incorporated into the staff assessment. I may be  
14 wrong, but I need your guidance on that.

15 MR. GOLDEN: Do you mean did we  
16 incorporate a CEQA analysis that somehow judged  
17 the efficacy of the agreement between the  
18 applicant and San Joaquin Air District? In other  
19 words, basically judging whether, in fact, there  
20 was a CEQA analysis done on the San Joaquin  
21 agreement?

22 HEARING OFFICER GEFTER: Yes. Yes. And  
23 in addition to that, whether, you know, there is a  
24 CEQA analysis in the staff assessment that staff  
25 did, in addition to the agreement. Beyond --

1 MR. GALATI: If I could just --

2 HEARING OFFICER GEFTER: -- agreement.

3 So there are two questions.

4 MR. GALATI: If I could just try to  
5 provide some clarification there. Tesla's  
6 agreement with San Joaquin Valley was the first  
7 one in the area. Before Tracy, before East  
8 Altamont.

9 Second of all, the air quality  
10 mitigation agreement was entered into above and  
11 beyond the offsets required by Bay Area. The  
12 purpose of it was to identify and provide moneys  
13 so that there could be air quality benefits in San  
14 Joaquin Valley above and beyond what was required  
15 by a new source review.

16 Staff analyzed the effectiveness of the  
17 air quality mitigation agreement. And my  
18 understanding was that, as the staff assessment is  
19 now, believed that more mitigation was required  
20 for CEQA, under their CEQA analysis.

21 So, I don't believe San Joaquin Valley  
22 Air Pollution Control District did a CEQA analysis  
23 to support entering into the agreement. If that  
24 was the question, there is no document saying that  
25 they engaged in a project when they entered into

1 the agreement to accept the money and to do some  
2 local improvements.

3 HEARING OFFICER GEFTER: We'll have the  
4 District give us some testimony on that at  
5 hearings as to whether you actually did a CEQA --  
6 whether the District did a CEQA analysis in coming  
7 to the terms of the agreement with the Tesla  
8 project. And also whether there is a cumulative  
9 impact analysis incorporated into that, given that  
10 East Altamont is also in agreement with the  
11 District, a similar agreement with the District.

12 And then the next question is staff's  
13 CEQA analysis which is above and beyond the  
14 agreement between Tesla and the San Joaquin Air  
15 District.

16 And then also with respect to -- staff  
17 has listed criteria at page 4.1-41 for  
18 effectiveness of the air quality mitigation  
19 agreement. And it's a series of bulleted items on  
20 that page. And the question is whether the  
21 applicant agrees with the criteria. And if so,  
22 how does the agreement follow those criteria.  
23 Again, you can answer that --

24 MR. GALATI: I can answer that we do not  
25 agree with their criteria. And I can answer that

1 we will provide testimony we believe supported by  
2 San Joaquin Valley Air Pollution Control District  
3 at the evidentiary hearing for what criteria  
4 should be used.

5 HEARING OFFICER GEFTER: Okay. Thank  
6 you. So that would be another issue in which  
7 there is a disagreement?

8 MR. GALATI: This was something that --  
9 all of your questions go towards the area that we  
10 believe that we would propose a condition that may  
11 provide a compromise between staff's position and  
12 our position.

13 HEARING OFFICER GEFTER: Okay. But till  
14 we get there these are questions that need to be  
15 answered. And if you can answer them before we  
16 get to hearing, that would be very helpful.

17 MR. GALATI: You bet. And our testimony  
18 includes going into these areas, the amount of  
19 time I gave you.

20 HEARING OFFICER GEFTER: Staff proposes  
21 mitigation beginning at page 4.1-44, and it's  
22 based on their factors for determining adequacy of  
23 the proposed mitigation. And staff uses the  
24 existing ERCs in the San Joaquin Air District, and  
25 then comes up with a seasonal analysis for



1 mitigation.

2 And I want to hear staff at hearings  
3 whether this is a typical way of analyzing the  
4 effectiveness of mitigation; whether it's for this  
5 particular case; whether there's precedent for  
6 this; or where your analysis comes from, based on,  
7 you know, where did you get the idea of doing  
8 seasonal analysis as to the adequacy of the  
9 mitigation.

10 And also whether the applicant agrees or  
11 disagrees with that approach.

12 In staff's proposed conditions, air  
13 quality SC-6 and then air quality SC-7, which I  
14 understand the applicant wishes to rewrite, in  
15 AQSC-6 staff talks about partially mitigating  
16 year-round impacts, I guess based on a seasonal  
17 methodology. And I'm concerned that that's a very  
18 vaguely drafted language for a condition.

19 MR. GOLDEN: Excuse me, --

20 HEARING OFFICER GEFTER: It's SC-6,  
21 yeah.

22 MR. GOLDEN: It is AQSC-6?

23 HEARING OFFICER GEFTER: Yeah. I think  
24 so. I may have written that down wrong, just a  
25 minute.

1           Oh, yes, it is. It is AQSC-6. Because  
2       reading it, the second sentence says: If  
3       additional ERCs are submitted the project owner  
4       shall submit an updated list. And then shall  
5       request CPM approval for any substitutions, et  
6       cetera.

7           This is a very sort of vaguely drafted  
8       condition, because I think that the way I would  
9       like to see conditions drafted is that these are  
10      the ERCs; this is the package we're going forward  
11      with. And there's a lot of leeway in here for,  
12      you know, substitutions and alternatives and that  
13      sort of thing. And perhaps it can be redrafted to  
14      lock the applicant in more specifically.

15          I understand that Mr. Jang from the Bay  
16      Area Air District is here now, and we may need  
17      your help, so come on forward. We're discussing  
18      air quality right now.

19          Also I'm not sure on AQSC-6, whether  
20      this is referring to the offset package that the  
21      Bay Area has approved in the FDOC, or whether this  
22      package goes towards meeting CEQA analysis that  
23      the staff has proposed. And it's just not  
24      specific enough to work as a condition.

25          AQSC-7, I know staff -- as the applicant

1 has indicated, they wish to rewrite it. So we're  
2 going to, you know, look at the rewritten proposal  
3 and see what we can do with that. Because, again,  
4 I'm concerned about AQSC-7, as well, being vague  
5 at this point.

6 Now it's not specific, especially where  
7 it talks about providing emission reductions for  
8 the life of the project. How does that work? So  
9 we need some language explaining how we are going  
10 to make sure that those emission reductions occur  
11 for the life of the project.

12 Another question I have is -- and I  
13 don't know whether it would go to AQSC-8 or not --  
14 it talks about the circulating water flow to the  
15 cooling towers. Often I've seen this particular  
16 type of condition also include some language  
17 eliminating ammonia drift. And there isn't.  
18 Unless it's included in the conditions in the  
19 FDOC, there isn't any language in the conditions  
20 regarding ammonia drift. And I didn't know what  
21 the limit was. Is it 5 ppm?

22 MR. GOLDEN: Are you referring to  
23 ammonia drift from the cooling tower?

24 HEARING OFFICER GEFTER: From the  
25 cooling towers, yeah.

1 MR. GOLDEN: Okay, that --

2 HEARING OFFICER GEFTER: I'm sorry, it's  
3 not -- right, that's from the HRSGs, --

4 MR. GOLDEN: Yes.

5 HEARING OFFICER GEFTER: -- but there's  
6 usually language saying that there is a drift  
7 eliminator.

8 MR. GOLDEN: Right.

9 HEARING OFFICER GEFTER: And I don't see  
10 it in here --

11 MR. GOLDEN: Oh, I see what you're --

12 HEARING OFFICER GEFTER: It may be in  
13 here some --

14 MR. HELM: -- getting into. You're  
15 talking about a drift eliminator to reduce  
16 particulate emissions. Okay.

17 HEARING OFFICER GEFTER: Yes. I'm  
18 sorry, I --

19 MR. GOLDEN: Okay, that's different than  
20 ammonia slip from the heat recovery steam  
21 generators.

22 HEARING OFFICER GEFTER: Yes.

23 MR. GOLDEN: Okay.

24 HEARING OFFICER GEFTER: I know that, I  
25 was --

1           MR. GOLDEN:  So we're talking about the  
2   drift eliminator --

3           HEARING OFFICER GEFTER:  Yeah, drift  
4   eliminator for the cooling towers, that's right.  
5   I'm sorry, I got those two -- also, one thing I'd  
6   ask staff to look at is whether it was intended  
7   that AQSC-6 and AQSC-7 were alternative  
8   conditions, or whether they were supposed to work  
9   together.

10          Because you can't -- I would not accept  
11   alternative conditions.  You have a condition that  
12   sets up what the offset package is and how  
13   mitigation should work over the life of the  
14   project.  And somehow it seems to me that they are  
15   interconnected, these two conditions.

16          MR. GOLDEN:  Well, if I could just  
17   elaborate just generally, AQSC-6 is basically to  
18   specify the requirements of the offset package  
19   required by the Bay Area Air Quality Management  
20   District to meet their needs.  And AQSC-7 is a  
21   recommendation that meet our CEQA analysis for  
22   additional mitigation.

23          So they are -- they, in effect,  
24   complement, because AQSC-6 does provide, in our  
25   judgment, some level of mitigation.  It doesn't

1 provide, in our opinion, all the mitigation.

2 That's why we have AQSC-7.

3 HEARING OFFICER GEFTER: Good, okay.

4 That's what I thought was intended, and I think  
5 that perhaps we could, either of the conditions  
6 can specify that in the language of the condition.  
7 Or there could be some testimony that explains  
8 that and we can include that in our analysis of  
9 the testimony.

10 MR. GOLDEN: All right.

11 HEARING OFFICER GEFTER: Right, yeah,  
12 thank you. I do have a question actually for the  
13 Bay Area, Mr. Jang, if you're still here. There  
14 you are. I have a question for you. Could you go  
15 up to the mike.

16 This may be a policy question and  
17 perhaps you can't answer the question but give it  
18 a try. This is the question that I heard from a  
19 lot of the members of the public in the Tracy  
20 area.

21 They want to know why the Bay Area  
22 doesn't consider the transport of emissions to the  
23 San Joaquin Valley in forming your -- putting  
24 together your FDOC and the conditions that the  
25 applicant is required to comply with.

1           MR. JANG: My name's Dennis Jang with  
2           the District. Well, the regulations don't  
3           specifically address that issue. So, it can come  
4           into play in the planning process when we're  
5           trying to determine what kind of rules and  
6           regulations we're going to adopt, but the rules,  
7           as they stand right now, do not address that  
8           issue.

9           So, I'm not sure if the answer --

10          HEARING OFFICER GEFTER: Are the Air  
11          Districts working together? Is the Bay Area Air  
12          District working together with the San Joaquin  
13          Valley Air District on the transport of the  
14          emissions from the Bay Area with respect to this  
15          project, the Tesla project?

16          MR. JANG: Not with respect to this  
17          specific project. But we do talk, the two  
18          Districts do talk to each other about the issue.

19          HEARING OFFICER GEFTER: And then I've  
20          had -- okay, I think we're going to have some  
21          members of the public have questions, so if you  
22          don't mind staying for awhile and perhaps answer  
23          some of their questions?

24          MR. JANG: Sure.

25          HEARING OFFICER GEFTER: And mine.

1 MR. GALATI: Again, if I could just  
2 interject. When the San Joaquin Valley had  
3 concerns about transport we entered into  
4 discussions with them and they helped develop the  
5 air quality mitigation agreement to alleviate the  
6 transport concerns because the Bay Area, in order  
7 to comply with the Bay Area rules there were no  
8 additional offsets required for transport. So  
9 that was actually the problem trying to be solved.

10 The other thing, Ms. Geftter, is if you  
11 look at AQ-52 has the drift.

12 HEARING OFFICER GEFTTER: Oh, it does  
13 have it?

14 MR. GALATI: Yeah, it does have the  
15 drift. I knew it was in here. You're right, it's  
16 usually earlier, but it's AQ-52, it's a Bay Area  
17 requirement.

18 HEARING OFFICER GEFTTER: And it is a Bay  
19 Area requirement. Yes, okay, great. That's fine.  
20 That's the language I was looking for.

21 MR. GALATI: If the District doesn't do,  
22 the staff does it. In this case the District did  
23 it.

24 HEARING OFFICER GEFTTER: I have another  
25 question for -- okay, did you want to make a



1 statement, Mr. Jang?

2 MR. JANG: I was just going to say that  
3 you were looking for the ammonia slip limits, and  
4 that's also in the --

5 HEARING OFFICER GEFTER: It's in the --

6 MR. JANG: -- the FDOC conditions, so.

7 HEARING OFFICER GEFTER: Good. Great.

8 MR. JANG: And I think there's also some  
9 language addressing the cooling tower drift rate,  
10 so.

11 HEARING OFFICER GEFTER: Yeah, I think  
12 that's the one that Mr. Galati just referred to.  
13 That would be great, you know, if you could  
14 actually point out those sections to us, those  
15 conditions to us at the evidentiary hearing or in  
16 the filed testimony. It would be easier for us to  
17 identify where that language is located. Thank  
18 you.

19 I have one more question for staff, and  
20 it's on page 4.1-50 regarding cumulative impacts.  
21 It wasn't clear to me from the text here what  
22 staff's conclusions are regarding cumulative  
23 impacts. It says only that the maximum impacts  
24 occur in elevated terrain at 3.5 miles southeast  
25 of the site.

1           But it doesn't tell me what your  
2       conclusions are regarding the cumulative impacts  
3       or how it was analyzed.

4           And then again, the other question I  
5       have, too, and it's regarding AQSC-4, about the 20  
6       percent opacity when you have visible emissions.  
7       And I know I've seen that in several conditions in  
8       the last several cases, and it seems very vague to  
9       me. I don't know how you measure 20 percent  
10      opacity. So let's perhaps be more specific.

11          And another question I have is why there  
12      isn't a condition that includes a requirement that  
13      the applicant use a water truck at all times to  
14      make sure that there is no dust blowing around  
15      during the construction. And then you may have an  
16      answer to that, but that's a question I have. And  
17      it may be a good answer.

18          We have several members of the public  
19      who have questions on air, and I thought we would  
20      try to do that right now, since some people have  
21      to leave. And Mr. Jang from the Bay Area is here,  
22      as well as the representative from the San Joaquin  
23      Air District. So why don't we get to some public  
24      questions.

25          MR. GOLDEN: Before you do that, I want

1 to kind of understand the format here. Are these  
2 questions that we take under advisement to respond  
3 to at the hearings, or are we just going --

4 HEARING OFFICER GEFTER: The questions I  
5 gave you respond to at the hearing.

6 MR. GOLDEN: Yes, --

7 HEARING OFFICER GEFTER: In your  
8 testimony.

9 MR. GOLDEN: Yes, but the public  
10 questions here?

11 HEARING OFFICER GEFTER: The Committee  
12 will respond to that, you know, unless you have an  
13 answer right now.

14 MR. GOLDEN: Okay, okay.

15 HEARING OFFICER GEFTER: Yeah, okay.  
16 And what we might say --

17 MR. GOLDEN: We could be here a long  
18 time.

19 HEARING OFFICER GEFTER: -- to the  
20 public is talk to staff and talk to applicant.  
21 But we don't need to do it on the record. I mean,  
22 in other words, --

23 MR. GOLDEN: Okay.

24 HEARING OFFICER GEFTER: -- it's, you  
25 know, the questions will be put out and we will

1 listen to the questions. We don't need to answer  
2 them right today.

3 There was someone who had to leave right  
4 away, and let me see if I can -- someone who had  
5 to leave at 7:00? Was that you? In the back,  
6 yes, please come on.

7 MS. HALL: I don't have a particular  
8 question, but you may be able to derive questions  
9 from my comments. Is that permissible?

10 PRESIDING MEMBER GEESMAN: Yes.

11 MS. HALL: My name is Stacey Hall and  
12 I'm a resident of Tracy; have been all my life.  
13 And I wanted to bring some concerns to the  
14 Committee concerning the power plant from the  
15 perspective of air quality and also the  
16 perspective of the taxpayers.

17 We have a group here in town and we do  
18 watch all the tax issues as they go back and forth  
19 here in Tracy, and we try to stay up on all the  
20 issues concerning how our tax dollars are spent.

21 One of the comments, I'll just start  
22 with the air quality because that's what you're  
23 addressing right now. When you come over the  
24 hill, or from either direction, to get into the  
25 Valley you see the kind of air that you're

1 breathing. And it's either brown or green when  
2 you're coming down, so it's very discouraging.

3 And we also have, since we have the  
4 other power plants and the biomass plant, and that  
5 adds to that pollution.

6 The County of Alameda will receive  
7 property taxes from the power plant. We, as  
8 Tracy, will supply water and the first responder  
9 in an emergency. And also we will likely be the  
10 recipient of most of the emissions from the plant.

11 Those are major concerns for us living  
12 here. Many of us have asthmatic conditions or  
13 allergies, and this just exacerbates that.

14 From this other taxpayers winning  
15 situation because we are going to, as Tracy, we're  
16 going to have to supply so many things this plant  
17 is going to need. It appears to me that the  
18 Alameda County is the one in the win/win situation  
19 of this circumstance.

20 So, those are the main things I wanted  
21 to bring out. Air quality is very very major in  
22 the minds of most of the people sitting here  
23 tonight. And I'm bringing the perspective of the  
24 taxpayers, as well.

25 I don't know if there's any good

1 neighbor mitigation available. If this plant goes  
2 in, that will help mitigate these concerns, or  
3 mitigate our first response. We have a fire  
4 station that is actually closing. And sadly  
5 enough, I have a feeling that we're going to need  
6 that station, as Tracy is growing. And if we  
7 cannot accommodate the growth that we have now  
8 with the stations we have now, how can we then be  
9 first responders in the case of an emergency with  
10 this power plant, and also the biomass plant and  
11 the other power plant we have here.

12 So those are my concerns I wanted to  
13 bring to the panel sitting here tonight.

14 HEARING OFFICER GEFTER: Thank you.

15 MS. HALL: Thank you.

16 HEARING OFFICER GEFTER: Also several  
17 people listed air quality along with other topics,  
18 so let's stick with air quality right now, since  
19 this is the issue of the concern.

20 From Irene Sundberg. Is Ms. Sundberg  
21 here?

22 MS. SUNDBERG: I actually want to talk  
23 on three subjects tonight. And I'll start out  
24 with air quality, and would you like me to  
25 continue on to the other two that I want to talk

1 about, or just the air quality?

2 HEARING OFFICER GEFTER: Just air right  
3 now.

4 MS. SUNDBERG: Okay. I'd like to  
5 welcome you, the Commissioner and your staff, to  
6 Tracy along with Florida Power and Light. We know  
7 that this didn't have to happen in Tracy, and that  
8 it's always a gift to have you here. It's nice to  
9 know that Sacramento thinks we're an important  
10 part of this process, and we believe we are.

11 I consider myself to be an educated  
12 person and I know that everyone in this room is,  
13 also, otherwise we wouldn't be here tonight.

14 in front of me I just sat down  
15 medications that are used by one asthma victim  
16 here in town on a daily basis. There's over \$1000  
17 worth of medication sitting on that chair. It's  
18 shocking.

19 Asthma affects our children; it affects  
20 the adults; it affects the way we breathe; it  
21 affects our daily life. Not included in this pile  
22 of medication, which would be included in an  
23 average daily asthma person's medication, is a  
24 nebulizer. That's a machine that helps you  
25 breathe.

1           If there's an infection they add to  
2       these medications steroids and antibiotics to  
3       clear up your lungs. This is an everyday person's  
4       medication. This is sad. And this is what  
5       Alameda County wants to send to Tracy.

6           I find this totally appalling. I've  
7       been a taxpayer here for 20 years. I was an  
8       intervenor on the GWF process. I'm a member of  
9       this community in good standing and have been for  
10      a long time. I'm a grandmother of three boys; one  
11      six, one eight, and our 13-month-old boy that  
12      lives in the Central Valley was rushed to  
13      emergency less than two weeks ago and diagnosed  
14      with asthma.

15          Now, all three of our boys have asthma.  
16      This is not an acceptable way of life for  
17      California. It's not acceptable through the  
18      Central Valley; it's not acceptable for the Bay  
19      Area. And for Alameda County to expect us not to  
20      ask for mitigation, and for Florida Power and  
21      Light not to expect us to ask for mitigation is  
22      appalling.

23          For you not to work with us and see to  
24      it that this is taken care of, it's an ungodly  
25      deed at this point. You know, I'd be ashamed of



1 the fact that you wanted to do this to our  
2 community.

3 This has to stop. We need to clean up  
4 our air, and we need to make an assertive effort  
5 to make sure that we have good air quality, not  
6 just something that we can pass by.

7 In July alone we've had 17 spare-the-air  
8 days. That's much too many for my asthma or  
9 anyone else's. You could go outside here today  
10 and cut the air with a knife. We were very lucky  
11 to have gotten to see what the air looked like  
12 when we came from the bus ride today if you were  
13 paying attention. And when we were outside you  
14 could see, it was gray, the skies were gray, and  
15 all of that was air pollution that we are expected  
16 to breathe.

17 Thank you.

18 HEARING OFFICER GEFTER: Thank you, Ms.  
19 Sundberg. I know you have other comments later.  
20 We'll get to those, as well.

21 And then also Jacqueline Wagner.

22 UNIDENTIFIED SPEAKER: She wanted to  
23 comment on land use.

24 HEARING OFFICER GEFTER: On land use.  
25 Okay, I have her down for air quality. Okay. And

1       also Carole Dominguez.

2               MS. DOMINGUEZ: Good evening, panel. My  
3       name is Carole Dominguez, 2350 South MacArthur,  
4       Tracy. I'm a citizen of Tracy. I'm also a member  
5       of Tracy Regional Alliance for a Quality  
6       Community.

7               However, tonight I'm here for a personal  
8       reason. My son has asthma. He's eight years old  
9       and he's really suffering because of the air  
10      quality here in Tracy.

11              I've heard comments that there's a legal  
12      obligation to Alameda County for the mitigation.  
13      But what I'm here to ask is what about the moral  
14      obligation? Is there a moral compass for this  
15      project? Because San Joaquin County and Tracy, in  
16      particular, are going to be the ones that suffer  
17      in terms of air quality.

18              So I would like, in the process of the  
19      hearings, if possible, for the developer to  
20      address the moral obligation that the project has  
21      to the community.

22              There is a map in the back of the room,  
23      and I wondered if we could bring it to the front  
24      because I did want to point one other thing out  
25      before I step down?

1 HEARING OFFICER GEFTER: Sure. I think  
2 if somebody from --

3 MS. DOMINGUEZ: Should I go get it or --

4 HEARING OFFICER GEFTER: Well, somebody  
5 from --

6 MS. DOMINGUEZ: The far one.

7 HEARING OFFICER GEFTER: She can bring  
8 it.

9 MS. DOMINGUEZ: The other one.

10 (Pause.)

11 MS. DOMINGUEZ: Thanks, Paula. Maybe  
12 down there by Bob.

13 One of the things that I brought to the  
14 CEC last summer when we were going through the GWF  
15 hearings was that the City of Tracy is planning to  
16 put a new sports park next to the peaker plant.

17 And when you look at the map on the top  
18 there are three dots. I hope you can see them.  
19 One is the peaker plant; the one on the left side  
20 is the Tesla project; and the one up on top is the  
21 East Altamont project.

22 You know, President Bush has his axis of  
23 evil. So does Tracy. And our kids are going to  
24 be playing on a soccer field in the middle of that  
25 axis of evil. Because our City Council, who none

1 of them are here tonight, has abdicated any  
2 concern for the community. The citizens are the  
3 ones that have to come, and come before you and  
4 express the concern about air quality.

5 Where is our City Council? I'll tell  
6 you where they are. They're laying low because  
7 they want to sell that treated water to the plant.  
8 They don't understand that we have an air quality  
9 problem. They are in denial. And the citizens  
10 are the ones that are going to suffer.

11 So we really need for the developer to  
12 address the issue of its moral obligation to our  
13 community, legal obligations aside.

14 Thank you.

15 HEARING OFFICER GEFTER: Thank you. Ena  
16 Aguirre.

17 MS. AGUIRRE: Good evening, panel. My  
18 name is Ena Aguirre.

19 HEARING OFFICER GEFTER: Sorry I  
20 mispronounced your name.

21 MS. AGUIRRE: That's all right, no  
22 problem. And I just would like to talk to you  
23 about five things. They're going to go very quick  
24 and they relate to air quality.

25 I'm really very interested in the

1 cumulative impact because I really don't think  
2 that those of us who have lived in Tracy or now  
3 live in Tracy have been given a clear information  
4 as to where were we before the peaker plant; where  
5 are we now with the peaker plant; how is our air  
6 like with the biomass; how will our air be with  
7 all these three news ones? You won't put them all  
8 together, hoping to confuse all of us.

9 So, it's important that all of this  
10 cumulative be well defined as to how much the air  
11 quality was before the peaker plant, what is it  
12 now? And take each of the peaker plants and just  
13 put them all together. I mean I even thought of a  
14 way of doing it in the computer, you know. and on  
15 the other side then you would put how much of that  
16 bad air are you taking out, and see what the  
17 equation looks like. It's not a brain-buster. It  
18 can be done.

19 Number two, one of the things that we  
20 never talk about is environmental justice. EJ,  
21 you know, refers to all of us whether we are  
22 Latinos, African-Americans, Anglos, Asians,  
23 whatever. And environmental justice has to do  
24 with what is it that, you know, industries or  
25 companies do in conjunction with either federal or

1 state or city agencies, that, in fact, negatively  
2 affect a community.

3 And, again, you know, environmental  
4 justice applies to everybody. One of the groups  
5 that it does apply to a lot are the campesinos,  
6 the farmworkers. We have a lot of them here in  
7 Tracy, and they are getting impacted because there  
8 are so many of them that work around the power  
9 plants. So this is something that we have not  
10 dealt with.

11 I have been attending the environmental  
12 justice workshops that the Governor has been  
13 putting together for a year and a half. And every  
14 agency is supposed to have an environmental  
15 justice component in whatever work they do.

16 The next thing is the whole issue of the  
17 precautionary principle. The precautionary  
18 principle has to do with do no harm. If anything  
19 that you do might do harm to any living being,  
20 what we're all supposed to do is not do that,  
21 whatever it is. So I would like to see some kind  
22 of discussion in there about what kind of  
23 precautionary principle we are following vis-a-vis  
24 the power plants.

25 The last one has to do with biomedicine.

1 Biomedicine is one of the latest areas that are  
2 being developed simply because of the impact of  
3 air quality and the environment of whatever. And  
4 I know that it's possible, as part of mitigation,  
5 that there be a biomedicine component.

6 And this is something that costs maybe  
7 between \$5000 and \$10,000. They did it in San  
8 Rafael in Marin County about a year ago. And the  
9 idea behind this is that you get about 400 or  
10 maybe 300 volunteers that are willing to have  
11 their body analyzed vis-a-vis how much plutonium,  
12 uranium, whatever you have in your body.

13 So, you know, two or three years from  
14 now, or five years from now if somebody comes up  
15 and says, hey, you know, I'm really sick because  
16 of the power plant, you can do a second test. And  
17 say, well, you know, gee, you know, five years ago  
18 when we took all of the studies in your body, the  
19 amount of plutonium, whatever, was the same. So  
20 it couldn't be the power plant; it's got to be  
21 something else.

22 And this is the kind of thing that is  
23 now being looked at. And I would like to see you  
24 all be a little creative on the mitigation. And  
25 maybe this is something that can be done for

1 Tracy, because so many of us are concerned simply  
2 because of the large number of plants that all of  
3 a sudden have appeared in Tracy.

4 And this is going to be something that  
5 is not going to cost too much money; can be done,  
6 takes about a day to do, you know, 200 or 300. If  
7 anybody's interested I'll bring the article in the  
8 paper about, you know, what have been -- what were  
9 the results in San Rafael in Marin County.

10 And the last thing that I would like to  
11 talk about is spare-the-air days. I don't know if  
12 any of you are like some of us, okay, we are  
13 senior citizens; some of us have asthma; some of  
14 us have heart problems; some of us have arthritis.  
15 And then spare-the-air days come. And all of a  
16 sudden you're being told, hey, don't leave your  
17 house; stay inside.

18 Now I find that very difficult to do.  
19 So I would like to see this plant, or as part of  
20 the mitigation, you know, is it possible as part  
21 of mitigation to get some air masks for those of  
22 us who are, you know, who have all those problems,  
23 who can't stay home, but are able to go out, you  
24 know, drive, whatever.

25 I'm trying to be as creative, in other



1 words, if we have a problem we should be able to  
2 come up with some kind of solutions on how to deal  
3 with some of the problems. Because spare-the-air  
4 days are not getting less, they're getting more.  
5 And so we should start trying to see what are the  
6 kinds of things that we can come up with that may  
7 be able to help everybody.

8 Thank you very much; I really  
9 appreciate.

10 HEARING OFFICER GEFTER: Thank you for  
11 your suggestions. Also, Susan Sarvey.

12 MS. SARVEY: Hi. I'm Susan Sarvey with  
13 Clean Air for Citizens and Legal Equality, a local  
14 citizens group. I was at the East Altamont  
15 hearings. And I think there's a few things that  
16 we need to clarify right away.

17 I heard Commissioner Keese say very  
18 clearly that East Altamont was not a precedent  
19 setting case, and it would not be used in the  
20 siting of other plants.

21 I also heard him say that he was going  
22 to meet with the other Commissioners and  
23 interested parties to come up with a fair protocol  
24 for plants that are going to be sited on one piece  
25 of land that affects another jurisdiction.

1           I think it would be very important for  
2       us to have these hearings and come to a conclusion  
3       in relation to that before we go forward with  
4       these Tesla hearings. Otherwise, we're flogging a  
5       dead horse; we're going to end up in the same  
6       situation we are with East Altamont, where it's  
7       gone on for months and months and months and we  
8       still don't have a license.

9           I think a very important statement got  
10      made here tonight, and that was when we all agreed  
11      that the mitigation that has been discussed for  
12      Tesla had no CEQA analysis done by the Bay Area or  
13      by San Joaquin Valley Pollution Control District.  
14      You cannot mitigate a problem that you have not  
15      evaluated.

16           And this has turned out to be a very  
17      large problem in the East Altamont case because  
18      San Joaquin Valley entered into a memorandum of  
19      understanding with no CEQA analysis. And it came  
20      out during the hearings that there's a very severe  
21      impact on Tracy. Staff recommended 13.9 million  
22      in mitigation. Staff was the only agency that did  
23      a full and adequate CEQA analysis. And nobody  
24      likes it. But nobody else did one. That doesn't  
25      mean we can't accept the only analysis we have

1 done. It means that's the only one we have to go  
2 on.

3 If we insist on going forward I'm going  
4 to have to insist on that 13.9 million for Tracy  
5 because that's the only CEQA analysis that has  
6 been done. So, unless we forget about all the  
7 memorandums of understanding and agreements that  
8 we've signed, I don't see how we can go forward.

9 And from the Pollution Control District,  
10 Mr. Sadredin said in this phone comments during  
11 the hearing that ERCs are worthless pieces of  
12 paper that do nothing for air quality.

13 I work on the GWF oversight committee.  
14 We are implementing real time emission reductions  
15 to clean the air here in Tracy because we have  
16 such a severe problem. We have solicited and  
17 applied for additional funding. We are doing much  
18 more than the original amount of money was thought  
19 to be able to do. We've almost doubled what we've  
20 been able to do, it looks like. And we're hoping  
21 to do even more than that.

22 And we are effecting a real air quality  
23 benefit for this town. I would like to see Tesla  
24 enter into an agreement similar to what GWF did  
25 with us to effect a real emission reduction for

1       our community. Because we will be the ones who  
2       will experience the smoke, the plume, all the  
3       after effects if there's a natural gas pipeline  
4       explosion. I don't want to hear that that doesn't  
5       happen because I've gone on the internet and I was  
6       floored by how many natural gas pipeline  
7       explosions I found. And I do plan on docketing  
8       them, so it's just not my word.

9               I understand that you maintain there's  
10       not fires at power plants, but I must tell you, on  
11       the internet there are several agencies that  
12       document on a daily, monthly basis throughout the  
13       world how many natural gas pipeline leaks,  
14       explosions, accidents, fires. You just have to go  
15       on there and look every day. And it would just  
16       really blow your mind.

17              So, since -- if they have an incident at  
18       that plant we will breathe it first. The wind  
19       will blow their fire on top of our community,  
20       which will make us have horrible air on top of  
21       horrible air that we're going to have already.

22              And I don't want to end up in the  
23       situation we're in in East Altamont where they're  
24       saying, we are putting out 66.7 tons of NOx a  
25       year. We only want to pay mitigation for one

1 year. They're going to put out that pollution for  
2 30 years. They owe us 30 years worth of emission  
3 reduction. I don't want to have to fight about  
4 this; I don't want to have to sue about this. But  
5 if you think I won't sue you to protect my  
6 children's health, you're talking to the wrong  
7 girl, because I am protecting my family.

8 Thank you.

9 HEARING OFFICER GEFTER: Thank you.

10 PRESIDING MEMBER GEESMAN: Let me say,  
11 having not had the opportunity to be at the  
12 Commission business meeting that took up the East  
13 Altamont case last week, it is my understanding  
14 that we will be moving forward in the next several  
15 weeks to have the Commission workshop that you  
16 alluded to.

17 And I do believe that we will have  
18 successfully addressed those issues before this  
19 case is ultimately decided.

20 But I don't see any reason that it would  
21 not be productive for us to move forward on  
22 hearings. I think the schedules will be  
23 compatible. And I don't think that resolution of  
24 those matters is very far away from the timing  
25 standpoint.

1 UNIDENTIFIED SPEAKER: Can you tell us  
2 how the public goes about knowing when you're  
3 having --

4 PRESIDING MEMBER GEESMAN: It will be  
5 publicly noticed.

6 HEARING OFFICER GEFTER: Are there any  
7 other public comments on the air quality? I don't  
8 have your --

9 MR. WILLIAMS: Yes, Ms. Gefter. I have  
10 one public comment form. And once these public  
11 comment forms are given to me, they will be  
12 docketed and become part of the public record in  
13 this case.

14 Ms. Laura Simon, I believe, filled this  
15 public comment form on air. And it reads: I need  
16 Tesla to be a good neighbor and implement  
17 mitigation like GWF did. But the mitigation needs  
18 to be much larger than what GWF did because the  
19 Tesla plant will be running more.

20 HEARING OFFICER GEFTER: Okay, thank  
21 you. Also I'm going to need you to fill out a  
22 little blue card so we can have your name.

23 MS. BUENAVISTA: Absolutely. I  
24 apologize I didn't do that, and I'll be short,  
25 sweet and brief.

1 HEARING OFFICER GEFTER: Tell us your  
2 name.

3 MS. BUENAVISTA: My name is Paula  
4 Buenavista; I'm a citizen of Tracy; I'm also a  
5 member of Clean Air for Citizens and Legal  
6 Equality. I'm also the vice chair of our  
7 oversight committee that works with GWF. And I  
8 have a comment just in regards to the good  
9 neighbor.

10 We had those conversations with GWF and  
11 we have an excellent working relationship with  
12 them. It's been a really productive process,  
13 great learning experience, and benefitting the  
14 community greatly.

15 Also I had that conversation with East  
16 Altamont and they weren't interested in being a  
17 good neighbor, working with the citizens of Tracy.

18 I know, I've spoken with some members of  
19 Florida Power and Light before, and I'm just  
20 really requesting that we just work together as a  
21 community. There are lots of great things that we  
22 can do to improve air quality here. I've seen  
23 some of the particular things you've put in place.  
24 I think they were wonderful. If you're going to  
25 be a part of this community, you're so incredibly

1 close, I know you're on the border.

2 In regards to what Carole Dominguez said  
3 about a moral obligation, I think it would be  
4 beneficial for everyone to have a great working  
5 relationship and an ongoing working relationship  
6 here. And yourself, as a business and a company,  
7 participating with the City of Tracy in whatever,  
8 you know, respects that you can.

9 It's not necessarily about the money;  
10 it's the money to benefit air quality, not for  
11 anything else but air quality programs alone. And  
12 we certainly have lots of specific details we  
13 could give you about the things that we've done.  
14 And there's been a lot of hard work on behalf of  
15 the citizens of Tracy.

16 We've had great conversations with  
17 members of the CEC giving us suggestions. And  
18 thereabouts came the great working relationship  
19 that we have with GWF in working with the CEC  
20 during the hearings that we had last year.

21 And lastly, you know, we will be  
22 directly affected, and it would be absolutely  
23 wonderful if we could have that same working  
24 relationship and all the great air quality  
25 benefits that we can possibly come up with, you



1 know, together.

2 That's it.

3 HEARING OFFICER GEFTER: Thank you.

4 Could you spell your name for the court reporter;  
5 just go over there and give him your name.

6 MS. BUENAVISTA: Okay.

7 MR. BUSA: I'd like to make a comment,  
8 Susan, if that's okay.

9 HEARING OFFICER GEFTER: Sure.

10 MR. BUSA: That's on the things we've  
11 been hearing. First of all, Paula, I'd like to  
12 thank you. You were the first one of the  
13 speakers, and some that I have not met and some  
14 that I have, to say that you've at least had a  
15 conversation with us and that we've been willing  
16 to do some things.

17 Let me say two things on that. We do  
18 want to be a good neighbor. We actually are  
19 already neighbors. I mentioned on the road trip  
20 we've got a number of folks that already work  
21 here, live here in Tracy and work on the wind  
22 farms in the Altamont Pass. And that's one of the  
23 reasons that we were the first company to approach  
24 the San Joaquin Air District with this idea of  
25 additional mitigations above and beyond what is

1 regulatory required.

2 This was done in May of 2002, you know,  
3 well over a year ago, when we recognized we did  
4 have a moral obligation. While we are not sure  
5 quite how to quantify it, and there's going to be  
6 a lot of debate, has been a lot of debate over  
7 that, but we did approach the Air District. We  
8 thought we came up with an equitable solution to  
9 provide additional mitigations.

10 Since that time I have met with several  
11 citizens here in Tracy representing or that have  
12 worked with the GWF project. We've also met with  
13 folks on the city council and city leadership.  
14 And have already made a written offer that we will  
15 do something similar to what GWF has done, fund a  
16 program that can create real time emissions  
17 reductions.

18 Here in Tracy we do want to work with  
19 the community and work with the community because  
20 we are part of the community. So you won't get  
21 the same cold shoulder from us that maybe you've  
22 gotten from others. And we do want to say we do  
23 listen and we've already put in writing that we  
24 are willing to provide money for mitigation  
25 programs here.

1 HEARING OFFICER GEFTER: Thank you.

2 Before we leave the topic of air quality I wanted  
3 to ask Mr. Jang of the Bay Area Air District to  
4 participate in the evidentiary hearings on air  
5 quality. Typically the District does attend the  
6 evidentiary hearings, and apparently Mr. Sarvey  
7 wants to cross-examine you and other parties may  
8 want to talk to you, as well.

9 So we're planning to schedule the  
10 hearings and hopefully you'll be able to be  
11 available for one of those days.

12 We have a lot of other topics to cover  
13 tonight. So, what I would recommend also is for  
14 the people who have questions about air quality to  
15 continue to try to talk to Mr. Busa or Mr. Caswell  
16 of the staff. Mr. Busa from the applicants and  
17 try to work directly with them before we get to  
18 evidentiary hearings on this project.

19 The next topic is biology. The dispute  
20 was raised by Mr. Sarvey, and I wanted to go  
21 directly to Mr. Sarvey to find out what your  
22 issues are regarding biology.

23 MR. SARVEY: The issue I have in biology  
24 is the mitigation isn't appropriate. I'm  
25 particularly concerned about the fact that the

1 plant's located next to a parcel that's already  
2 being preserved for habitat mitigation. I feel  
3 that the plant, itself, literally destroys that  
4 piece of parcel as habitat mitigation.

5 I'm also concerned about the noise of  
6 the plant and the light of the plant and the  
7 amount of mitigation that's set aside to offset  
8 those impacts. That's critical kit fox habitat.

9 I have Sean Smallwood, PhD, who will be  
10 testifying. I'm hoping to bring Sue Orloff in.  
11 She's the kit fox expert in these parts. And just  
12 feel that the mitigation is inadequate.

13 HEARING OFFICER GEFTER: Okay. And how  
14 much time are you going to need to present your  
15 direct testimony?

16 MR. SARVEY: Direct testimony would  
17 probably go no more than a half hour. Cross-  
18 examination, 15 minutes to a half hour for staff  
19 and applicant.

20 HEARING OFFICER GEFTER: I understand  
21 that the staff and the applicant are in agreement  
22 on the biology mitigation, right?

23 MR. GALATI: Yeah, I think we're in  
24 agreement with staff on the biological mitigation.  
25 I would just like to point that part of our -- one

1 of our parcels was obtained from the HERA National  
2 Wildlife Group who actually auctioned the property  
3 to us. They felt comfortable that we would not  
4 affect the remaining parcels that they currently  
5 do have to have mitigation on.

6 In addition, I would like to modify our  
7 amount of time since they're moving a witness to  
8 cross-examine, to add 15 minutes of cross-  
9 examination of Mr. Smallwood -- Dr. Smallwood, I  
10 believe, and add about five or ten minutes for  
11 rebuttal testimony.

12 HEARING OFFICER GEFTER: Five or ten  
13 minutes for what kind of testimony?

14 MR. GALATI: For rebuttal testimony.

15 HEARING OFFICER GEFTER: Rebuttal, okay.

16 MR. GALATI: And I currently have Dwight  
17 Mudry, Dr. Mudry, identified that we could submit  
18 on declaration. I needed that to be modified to  
19 give me some time.

20 HEARING OFFICER GEFTER: So all together  
21 you're looking at about a half an hour of biology?

22 MR. GALATI: Yeah, no more than a half  
23 hour.

24 HEARING OFFICER GEFTER: And staff?

25 MS. HOUCK: Staff would also be

1        requesting no more than half an hour.

2                HEARING OFFICER GEFTER:    The next topic  
3        is cultural resources.    I don't believe that any  
4        of the parties have contested that topic.    Oh,  
5        well, actually it looks like Mr. Sarvey has.    I'm  
6        sorry.    No?    Mr. Sarvey, that was one of the  
7        topics that you did not have a problem with?  
8        Okay, so none of the parties --

9                MR. SARVEY:    Mr. Boyd has a problem with  
10       cultural resources.

11               HEARING OFFICER GEFTER:    It was Mr.  
12       Boyd, right.    And he's not here tonight, so we  
13       don't know what his issue is.

14               And hazardous materials, I have a  
15       question only.    And that is for condition Haz-1,  
16       which is page 4.4-18.    It refers to appendix B.  
17       Appendix B, which is at the end of the FSA section  
18       on HAZMAT, it's not legible.    So I would like to  
19       have this table refiled where we can all read it.  
20       And it can be filed either, you know, retype it or  
21       rewrite it, because you can't read it.    It's a  
22       copy of a copy.    And perhaps -- okay, so someone  
23       will provide that to us.    All right.

24               And then questions on land use.    I have  
25       some questions.    Mr. Sarvey, apparently you have a

1 concern about land use, as well?

2 MR. SARVEY: Yes, I do. I'll be  
3 presenting Richard Snyder, co-author and campaign  
4 manager of measure D. Measure D is violated by  
5 the siting of the power plant. I'm requesting  
6 that the Energy Commission Staff provide us with  
7 an estimate of how much power is necessary to meet  
8 the needs of east county, which is a critical part  
9 of measure D.

10 Because the Energy Commission Staff are  
11 the only ones who are capable of doing this  
12 analysis. They've deferred to Alameda County,  
13 which has absolutely no capability to make this  
14 decision. So I would like to have Energy  
15 Commission Staff provide me with that analysis.

16 HEARING OFFICER GEFTER: What would the  
17 analysis be?

18 MR. SARVEY: The analysis would be the  
19 amount of electricity or electrical generation  
20 necessary to meet the needs of eastern Alameda  
21 County.

22 HEARING OFFICER GEFTER: And what would  
23 the relevance be?

24 MR. SARVEY: Pardon me?

25 HEARING OFFICER GEFTER: What's the

1 relevance of that?

2 MR. SARVEY: The relevance is the  
3 measure D states that infrastructure that in  
4 excess of what is needed to supply the residents  
5 of eastern Alameda County is not allowed in the  
6 area that you're siting the power plant.

7 MR. GALATI: I would have to object that  
8 that's an inaccurate representation of measure D.  
9 And I'd also like to inform the Committee that the  
10 board of supervisors made a finding in Alameda  
11 County that the project was consistent with  
12 measure D.

13 And we think that this analysis would be  
14 irrelevant to the Energy Commission making any of  
15 its findings.

16 HEARING OFFICER GEFTER: Do you have the  
17 language of measure D that you refer to? You'll  
18 have to get it to me right now if you have it,  
19 or --

20 MR. SARVEY: Oh, no. I'll present you  
21 with a complete copy --

22 HEARING OFFICER GEFTER: -- when you  
23 submit your testimony.

24 MR. SARVEY: -- of measure D with the  
25 language.



1 HEARING OFFICER GEFTER: Okay.

2 MR. SARVEY: I went through it quite  
3 extensively in East Altamont, and I realize it'll  
4 be the same issue here.

5 HEARING OFFICER GEFTER: And you have a  
6 witness who will be testifying on it?

7 MR. SARVEY: Richard Snyder. He's the  
8 co-author and campaign manager of measure D. He's  
9 the co-chair of the conservation of the Sierra  
10 Club, Bay Area Chapter.

11 HEARING OFFICER GEFTER: Okay.

12 MR. SARVEY: They have passed a  
13 resolution opposing this project on the basis of  
14 measure D, the Sierra Club has.

15 HEARING OFFICER GEFTER: All right.

16 MR. SARVEY: I will present that, as  
17 well.

18 HEARING OFFICER GEFTER: How much time  
19 are you going to need to put on Mr. Snyder's  
20 testimony?

21 MR. SARVEY: Well, Mr. Snyder probably  
22 will only take about 15 to 20 minutes. And I will  
23 be wanting to cross-examine the staff witness for  
24 approximately 15 minutes.

25 MR. WILLIAMS: Ms. Gefter, if I just may

1 add, I understand that to a certain extent you  
2 want to keep a separation between this project and  
3 East Altamont, but I would just note that rather  
4 than clutter up the record with new documents in  
5 Tesla, that material is contained within the  
6 record of East Altamont. And I would be happy to  
7 provide the material relevant to that for you.

8 Just so that you don't find it necessary  
9 to introduce these documents once again, if you'd  
10 like.

11 HEARING OFFICER GEFTER: We could  
12 certainly take administrative notice of the record  
13 in East Altamont. We will allow Mr. Sarvey to  
14 present Mr. Snyder as a witness.

15 MR. SARVEY: Pardon me?

16 HEARING OFFICER GEFTER: We will allow  
17 you to present Mr Snyder as a witness.

18 MR. GALATI: Ms. Gefter, I would need to  
19 modify my table reserving five minutes for cross-  
20 examination of Mr. Snyder.

21 HEARING OFFICER GEFTER: How much time?

22 MR. GALATI: Five minutes.

23 HEARING OFFICER GEFTER: Five minutes,  
24 okay.

25 MR. GALATI: In addition, I'd also like

1 to point to you that I believe that measure D is  
2 thoroughly described, and I think it's actually  
3 verbatim, the section we need to look in the AFC  
4 land use section.

5 I believe that we had reproduced the  
6 language of that section. If not, it's in a data  
7 response and I will certainly follow it up with an  
8 email if I find it for you.

9 HEARING OFFICER GEFTER: Okay, and you  
10 can refer me to where it's located. Okay.

11 MR. GALATI: I will do that.

12 HEARING OFFICER GEFTER: Thank you.  
13 Then I had some questions about the land use  
14 section, and this would be to the parties. There  
15 are several documents that are referred to in land  
16 use, the FSA land use section. Several letters  
17 that we should have copies of in the list of  
18 exhibits.

19 And perhaps you are intending to submit  
20 those, as well, but I will go over it. There are  
21 several letters. There's April 30, 2002 letter  
22 from the County, I guess it's Alameda County.  
23 There's a July 6, 2002 letter which is applicant's  
24 request for partial cancellation of the Williamson  
25 Act.

1           There's the, I guess it's the January  
2   24, 2003 letter from the Department of  
3   Conservation referring to the Williamson Act  
4   cancellation request. There's a letter from the  
5   Martins, who I believe own the property, dated  
6   January 27, 2003. And there is a resolution from  
7   the County, February 6, 2003, regarding the  
8   tentative cancellation action.

9           Okay, I need all of --

10          MR. GALATI: Correct. All of those have  
11   been docketed.

12          HEARING OFFICER GEFTER: -- those  
13   documents. Okay. We'll need them as part of the  
14   exhibits --

15          MR. GALATI: You bet, and --

16          HEARING OFFICER GEFTER: -- exhibit  
17   list. All right.

18          MR. GALATI: And one of the things I  
19   would like to point out is I think that the  
20   resolution from the County actually approving the  
21   cancellation has attached to it all those  
22   documents. I'd be intending to docket that as we  
23   go -- or move that as one exhibit.

24          HEARING OFFICER GEFTER: That would be  
25   fine. I just need to have them in the record.

1 I also have a question in the staff  
2 assessment at page 4.5-8. And the very last  
3 paragraph, the last couple of sentences say that  
4 the final cancellation will likely occur after  
5 Commission certification of the project. And then  
6 parties would have up to 180 days to challenge the  
7 final cancellation.

8 And if that means that there's six  
9 months after certification that parties can  
10 challenge the cancellation of the Williamson Act  
11 contract, that means that the applicant will not  
12 have site control for six months. Is that an  
13 accurate understanding of the --

14 MR. GALATI: No, that is not accurate.  
15 If I could explain. The tentative cancellation  
16 doesn't mean it's tentative. It means it's  
17 subject to conditions that need to be satisfied.  
18 The cancellation action by the county is -- and  
19 the statute of limitations began to run on the  
20 final cancellation. They used the FSA and their  
21 own CEQA document that they added as the CEQA  
22 document to support that action.

23 HEARING OFFICER GEFTER: Is there a  
24 document that actually states that this is a final  
25 cancellation?

1 MR. GALATI: The resolution does.

2 HEARING OFFICER GEFTER: And that's the  
3 resolution of February 6, 2003?

4 MR. GALATI: That's correct.

5 HEARING OFFICER GEFTER: All right.

6 MR. SARVEY: Can I add that they used  
7 the PSA as their document, not the FSA, for their  
8 environmental report?

9 MR. GALATI: Yeah, correct that, I  
10 misspoke.

11 MR. SARVEY: Thank you.

12 MS. HOUCK: Staff did have conversations  
13 with the Department of Conservation on this issue,  
14 and I think we were attempting to get them to  
15 submit documentation as to their interpretation  
16 because the issue of the statute of limitation had  
17 not been resolved; however, the County did take  
18 its action and we believe that the applicant had  
19 received their legal advice and talked with the  
20 Department of Conservation. But we were hoping  
21 that they would provide additional information for  
22 clarification on that issue.

23 HEARING OFFICER GEFTER: Well, I would  
24 like that clarification. Is that forthcoming from  
25 the Department of Conservation?

1 MS. ALLEN: I'm Eileen Allen, staff's  
2 witness for land use. We've --

3 HEARING OFFICER GEFTER: Eileen, could  
4 you lower the mike so we can hear you? Thank you.

5 MS. ALLEN: We've pursued the requested  
6 documentation from the Department of Conservation.  
7 I could renew that request. If the applicant has  
8 documentation or any correspondence on this point  
9 from the Department we'd appreciate seeing it.

10 My last contact with them about this  
11 item was in the spring. So we can pursue that  
12 between now and the hearing date. Verbally they  
13 told me that they would be considering a six-month  
14 challenge period following the final cancellation.

15 HEARING OFFICER GEFTER: Okay, so we  
16 need to clear that up, because that goes to site  
17 control.

18 MR. GALATI: Actually, if I could  
19 address that issue. I don't see how this goes to  
20 site control.

21 HEARING OFFICER GEFTER: Okay, well, you  
22 can disagree with me.

23 MR. GALATI: Okay, I'm just trying to  
24 understand so I can present my testimony how the  
25 applicant would not have control of the site.

1 HEARING OFFICER GEFTER: Because you  
2 wouldn't be able to build a power plant there  
3 until the statute of limitation runs. And if it's  
4 six months --

5 MR. GALATI: Actually, somebody would  
6 have to sue and get an injunction saying that it  
7 should not have been granted and show that we  
8 couldn't build. So the statute of limitations  
9 would not have to run. Someone would have to sue  
10 and be successful in getting an injunction.

11 HEARING OFFICER GEFTER: Yeah, but  
12 within six months.

13 MR. GALATI: Correct, within six months.  
14 But I believe we could start building at our own  
15 risk of such a lawsuit, and any point after  
16 certification.

17 HEARING OFFICER GEFTER: Okay, and  
18 that's why we need to discuss the legal  
19 interpretation of what it means to cancel the  
20 Williamson Act. And what happens during the  
21 reconsideration period. So, if that can be  
22 resolved before evidentiary hearings that would be  
23 helpful.

24 Also in land use the proposed condition  
25 Land-7 talks about an agricultural land



1 conservation easement plan. And it is not clear  
2 what that is. It's not specific in the text of  
3 the FSA, and the condition is rather vague. And I  
4 expect the Department, the staff and the applicant  
5 had something in mind, but I would like to see  
6 that in writing in the condition.

7 MR. GALATI: I'm sorry, which --

8 HEARING OFFICER GEFTER: It's Land-7.

9 MR. GALATI: Okay, we'll provide further  
10 clarification of that in our testimony.

11 HEARING OFFICER GEFTER: Right. And  
12 actually Land-8 goes to the questions that I just  
13 raised regarding the cancellation of the  
14 Williamson Act contract.

15 Also I need copies of the certificates  
16 of compliance with the Subdivision Map Act. And  
17 apparently there's some certificates that were  
18 issued October 19, 2001. So we should have that  
19 in the record, as well.

20 Appendix, I guess page 4.5-26 is also  
21 part of land use, and there are listed here  
22 conditional use permit findings. Is this from  
23 Alameda County's findings, or is this staff's  
24 representation? I don't know what this document  
25 is.

1 MS. HOUCK: These are the findings that  
2 Alameda County provided to staff as to what they  
3 would need to do in order to issue a conditional  
4 use permit if they have jurisdiction over the  
5 project.

6 HEARING OFFICER GEFTER: Okay. So, if  
7 this could be, at least some language in this  
8 document to indicate what this is, so it's part of  
9 the record, so I understand what it is if we're  
10 referring to it. It says the County's CUP  
11 findings for the East Altamont Energy Center. And  
12 this is Tesla. So I was not sure what this was.

13 MR. GALATI: I believe that the County  
14 wrote a letter, and I believe these were taken out  
15 of the letter. They just might have the wrong  
16 heading, but we would certainly submit the letter  
17 as an exhibit.

18 HEARING OFFICER GEFTER: Okay. If the  
19 letter is the more accurate document from the  
20 County that would be the best evidence.

21 MS. HOUCK: Okay.

22 HEARING OFFICER GEFTER: And we could  
23 include that as part of the condition. Is that  
24 the intent of staff to include those conditions as  
25 part of staff's conditions?

1 MS. HOUCK: I think the intent was to  
2 show that staff's conditions reflect what the  
3 County would have done, so that we are being  
4 consistent with local land use practices. And  
5 Eileen can --

6 MS. ALLEN: That is staff's intent.  
7 That appendix was referred to in the text on what  
8 is page 4.5-14 in the version I printed out this  
9 morning.

10 If the applicant has received a letter  
11 from Alameda County specifically addressing the  
12 Tesla project, we'd like to see it. We've  
13 repeatedly asked for one and have not received  
14 one.

15 MR. GALATI: I may be confused with --

16 MS. ALLEN: -- is there.

17 MR. GALATI: I may be confused with  
18 which letter because I know they wrote you a  
19 letter, and I couldn't remember if it included  
20 these findings. But it looked like these were  
21 your questions that you asked of them. Didn't  
22 they respond to that letter? I thought they did.

23 MS. ALLEN: They responded for East  
24 Altamont.

25 MR. GALATI: Okay, they only responded

1 for East Altamont.

2 MS. ALLEN: As far as our (inaudible),  
3 no.

4 MR. GALATI: Okay, well, I'll look  
5 through mine and see if we have a copy of what --

6 MS. ALLEN: It had a change in staff,  
7 the head of the Community Development Agency,  
8 Adolph Martinelli, has recently retired. Mr.  
9 Sorenson is now the head of the agency. Mr.  
10 Sorenson is familiar with the project because  
11 there's a new person that has taken Mr. Sorenson's  
12 place. I'll be talking with that person whose  
13 name is Chris Bazar, B-a-z-a-r. I'll fill him in  
14 on this particular need related to the Tesla  
15 project.

16 HEARING OFFICER GEFTER: Also, as a  
17 result of this discussion, the parties may need  
18 more time on land use to present their testimony.  
19 Would that be accurate?

20 MS. HOUCK: We can supply that with our  
21 rebuttal testimony and clarify and submit any  
22 exhibits we have regarding Tesla. And I think we  
23 have that information.

24 HEARING OFFICER GEFTER: And would you  
25 need more time to testify, present live testimony

1 on land use?

2 MS. HOUCK: We would probably want ten  
3 minutes to cross-examine Mr. Sarvey's witness; and  
4 we may need some additional time, 15 minutes, for  
5 redirect on our witness, as well as any potential  
6 witnesses from the County.

7 HEARING OFFICER GEFTER: So, 15 minutes?

8 MS. HOUCK: So, half hour to --

9 HEARING OFFICER GEFTER: A half hour  
10 to -- okay.

11 MS. ALLEN: Ms. Houck and I haven't had  
12 a chance to talk over the Alameda County staff  
13 change. We'll need to work with the County, who  
14 their witness will be. And it may be that we  
15 require --

16 HEARING OFFICER GEFTER: Would the  
17 applicant need more time, as well? Because you  
18 told me five minutes.

19 MR. GALATI: I think all we need to do  
20 is identify our exhibits. But my question is is  
21 Alameda County, is staff asking for an Alameda  
22 County witness.

23 MS. HOUCK: We relied on the County's  
24 interpretation of their ordinances and defer to  
25 them. So, it may be helpful to have one present.

1 I don't know if they'll actually need to testify.  
2 That will depend on Mr. Sarvey's direct testimony.

3 HEARING OFFICER GEFTER: Okay, will you  
4 let us know if you're going to bring in --

5 MS. HOUCK: Yes.

6 HEARING OFFICER GEFTER: -- an Alameda  
7 County witness?

8 MR. SARVEY: I'd like to have the  
9 Alameda County representative there.

10 MR. GALATI: Just to let the Committee  
11 know and to let Mr. Sarvey know that I plan to  
12 object to any questioning of an Alameda County  
13 representative on the validity of what the board  
14 of supervisors did in their resolution. Because I  
15 don't believe that it's appropriate for the  
16 planning staff to comment on what the board of  
17 supervisors did in their resolution.

18 So the resolution covers the Williamson  
19 Act contract; and it also covers the County's  
20 official determination on measure D.

21 So I just wanted to let you know I plan  
22 to do that.

23 MR. SARVEY: Then do we need to have Mr.  
24 Haggerty appear, as well?

25 MR. GALATI: No. The resolution is the

1 board vote; I'm going to introduce it into  
2 evidence and you can have Mr. Snyder say whether  
3 they should have done it or not.

4 If you want to call Mr. Haggerty, that's  
5 fine. But I don't believe it's necessary.

6 MR. SARVEY: All right, we need to  
7 answer --

8 HEARING OFFICER GEFTER: Mr. Sarvey, you  
9 can bring the witnesses that you wish to bring and  
10 we will rule on whether their testimony is  
11 relevant.

12 MR. SARVEY: The only thing that I  
13 thought was relevant was this, since the staff has  
14 deferred to Alameda County, as the staff attorney  
15 has said, then we need Alameda County present  
16 since it's not really the staff's testimony.  
17 They're just strictly deferring to Alameda County  
18 so it's really necessary to have their  
19 representative there. Whether it's the board of  
20 supervisors, whoever is in charge of the  
21 development.

22 HEARING OFFICER GEFTER: Well, if you  
23 have a witness that you wish to testify on your  
24 behalf, and Mr. Galati raises an objection, we  
25 will rule whether the witness' testimony is

1 relevant or not at that time.

2 But you're not precluded from bringing a  
3 witness. You just need to let us know who it is  
4 you intend to bring.

5 All right. And I have a final question  
6 on land use, and that is at page 4.5-17, in the  
7 context of compatibility with existing and  
8 planning land uses, which is a finding that staff  
9 makes in its analysis, it talks about grazing will  
10 continue for the cattle that are presently grazing  
11 there.

12 And it's unclear how putting a power  
13 plant there is compatible with allowing grazing.  
14 And so I -- we talked about that a bit at the site  
15 visit. So, if the applicant could explain to us  
16 how that can continue to occur. You could do that  
17 in your testimony or you could, you know, address  
18 it --

19 MR. BUSA: I can address it now, if you  
20 want. The power block where the actual equipment  
21 resides will be fenced off from the rest of the  
22 property there. The rest of the property will  
23 remain as grassland; and cattle grazing on that  
24 property outside of the power plant equipment.

25 HEARING OFFICER GEFTER: Okay. Well, if



1       you could include that in your written testimony  
2       on land use with respect to the finding of  
3       compatibility with existing and planned land uses,  
4       that would be helpful, because then I'll have that  
5       in the record.

6               Mr. Sarvey, you had an issue with  
7       respect to noise?

8               MR. WILLIAMS:   Excuse me, Ms. Gefter,  
9       before --

10              HEARING OFFICER GEFTER:   Yes.

11              MR. WILLIAMS:   -- before you move on I  
12       do have another public comment from Ms. Jacqueline  
13       Wagner on land use.

14              HEARING OFFICER GEFTER:   Okay.

15              MR. WILLIAMS:   And it reads:   I am an  
16       Alameda County resident and it is important to  
17       respect the voters' wishes and uphold measure D.  
18       If you want to build this plant you need to build  
19       it in an abandoned industrial site rather than on  
20       farmland.   Air and water rights must be protected.  
21       Do not ignore the voter mandate from measure D."

22              Thank you.

23              HEARING OFFICER GEFTER:   Thank you.

24       Actually it was Mr. Boyd who had a concern about  
25       noise, but it mentions that you will be the person

1 providing testimony.

2 MR. SARVEY: My issue with noise is  
3 strictly related to biology, so.

4 HEARING OFFICER GEFTER: Other than that  
5 there are no issues between the applicant and  
6 staff on noise.

7 MS. ALLEN: Ms. Gefter.

8 HEARING OFFICER GEFTER: Yes.

9 MS. ALLEN: Are you concluded with land  
10 use?

11 HEARING OFFICER GEFTER: Yes. Unless  
12 you would like to -- did you have questions? I'm  
13 sorry.

14 HEARING OFFICER GEFTER: Yeah, okay --

15 MS. ALLEN: I have nothing further to  
16 add. Then I'll --

17 HEARING OFFICER GEFTER: Okay, yes. Ms.  
18 Sarvey, you did indicate -- I'm sorry, I messed  
19 up. You did say you wanted to speak on land use.  
20 I'm sorry.

21 MS. SARVEY: Susan Sarvey. I would ask  
22 if you're going to just accept the board of  
23 supervisors' interpretation of measure D. There  
24 are letters out in the community now asking people  
25 if they feel the board of supervisors is

1 interpreting measure D as they interpreted it when  
2 they voted. And they are being asked to write the  
3 Energy Commission and let them know whether the  
4 siting of Tesla and East Altamont is in compliance  
5 with what they voted for.

6 So I would ask that when you get these  
7 letters they carry some weight, since these are  
8 from the very people who voted for this  
9 initiative.

10 I would also like to ask for a  
11 cumulative land use analysis. We have -- when you  
12 build a power plant you put in these special land  
13 areas for endangered species and biological  
14 resources. I would like some kind of cumulative  
15 study on how many times you can shift habitat and  
16 not just kill it.

17 Because we've shifted it for the peaker  
18 plant. We're going to shift it for East Altamont.  
19 We're going to shift it for Tesla. And then on  
20 top of that, we have all of the existing  
21 development that is in the process of being built  
22 that I'm not sure you guys are really looking at.

23 So, how are we going to make sure  
24 there's a place for biology and animals to live?  
25 And how many times can you move them before they

1       just give up?

2               And then I'm really curious about this  
3       whole Williamson Act thing. I have friends who  
4       have tried to get out of the Williamson Act for  
5       various reasons and it's been going on for years  
6       because they don't want to let you out of the  
7       Williamson Act. And suddenly they want this land,  
8       and boom, they're out of the Williamson Act. I  
9       find that rather curious.

10              And so I would hope that that would be  
11       looked into very carefully. And that it be  
12       understood there probably will be a lot of  
13       comment, if they are released from the Williamson  
14       Act, by people who are applying and are not being  
15       released and do not understand why.

16              Because I don't think you can establish  
17       that we're all going to be sitting in the dark if  
18       they don't build this plant. I don't think it's  
19       an absolutely urgent need for right now.

20              And if Mr. Galati is going to object to  
21       there being questions of the board of supervisors'  
22       decision I'd like to ask how are we going to  
23       handle, if in researching measure D it is found  
24       that they interpreted it wrong, if they  
25       interpreted it wrong and we prove that legally,

1       then they are agreeing to something that is  
2       against the voters' wishes, and is illegal.

3               How can you say that we can't talk about  
4       it?  It's kind of like a repeat of the San Joaquin  
5       Valley Pollution Control District signing a  
6       memorandum of understanding with no CEQA.  All of  
7       a sudden there's an impact and everybody's going,  
8       well, do you agree with what they're saying, is  
9       there a problem.  And they can't say yes or no or  
10      they'll get sued.  They're legally bound to remain  
11      silent.

12             So I would object to him being allowed  
13      to say no, we can't question that decision.  
14      Because it's possible it can be established that  
15      they, not maliciously, but through ignorance,  
16      misinterpreted that initiative.  And if it turns  
17      out that they did that, we should be able to  
18      discuss that.

19             And I hope you really will take into  
20      account the letters you'll be getting from Alameda  
21      County voters who want measure D enforced.

22             Thank you.

23             PRESIDING MEMBER GEESMAN:  Let me say  
24      we'll welcome the letters.  The courts have  
25      established some fairly direct rules of statutory

1 construction. And we will follow -- we will apply  
2 and follow those rules of statutory construction.

3 HEARING OFFICER GEFTER: Next topic is  
4 public health. None of the parties are disputing  
5 the public health analyses. I just have one  
6 question here for staff at page 4.7-10, in which  
7 staff is relying on data compiled by the Ventura  
8 County Air Pollution Control District regarding  
9 emission factors.

10 And my question is why the Ventura  
11 County APCD and not the Bay Area or the San  
12 Joaquin Air Pollution Control Districts.

13 So perhaps staff could get us that  
14 information.

15 MS. HOUCK: We can get you that  
16 information and be prepared to address it.

17 HEARING OFFICER GEFTER: Okay. And  
18 another question is regarding the health risk  
19 assessment. I know that your public health  
20 witness isn't here, but perhaps you can get this  
21 information to us at the hearing.

22 And it's at page 4.7-12. It indicates  
23 that the acute health hazard index is about three  
24 miles west-southwest of the project site. Could  
25 the testimony be more specific and tell us where

1       this location is? Is it a residential area? Are  
2       there sensitive receptors at that area? And give  
3       us a more accurate description of that point of  
4       maximum impact.

5               And then, again, with respect to chronic  
6       hazard index and the cancer risk, the testimony  
7       indicates it's at the northeast facility boundary.  
8       Again, that's not clear. Is that at the 25-acre  
9       site boundary or the entire 60-acre site parcel?  
10      And I need that particular location identified  
11      more specifically.

12             And then our next topic --

13             MR. SARVEY: Excuse me. Under public  
14      health I requested 15 minutes to cross-examine  
15      staff and applicant.

16             HEARING OFFICER GEFTER: You haven't --  
17      in your list you didn't list that, public health.  
18      Oh, you did, I'm sorry. What's your issue on  
19      public health?

20             MR. SARVEY: My issue is if the staff's  
21      conditions of certification are not met will there  
22      be a public health impact. The entire analysis of  
23      public health is based on staff's conditions of  
24      certification being met in terms of air quality.  
25      And if we come to some compromise position on

1       those conditions of certification of air quality,  
2       I want to know how that affects public health.  
3       That's my issue.

4               HEARING OFFICER GEFTER:   So you plan to  
5       cross-examine staff's witness on that?

6               MR. SARVEY:   Please.

7               HEARING OFFICER GEFTER:   Okay.

8               MR. GALATI:   Mr. Sarvey, you also listed  
9       questions for the applicant.   So I can bring the  
10      appropriate witness, is it something on the  
11      applicant model or --

12              MR. SARVEY:   I don't think you need to  
13      bring your witness.   That's fine, staff will be  
14      fine.   Thanks.

15              HEARING OFFICER GEFTER:   You just  
16      intended to cross-examine staff?

17              MR. SARVEY:   Yes.

18              HEARING OFFICER GEFTER:   I'm sorry it's  
19      running so late.   Ms. Sarvey, you have a question  
20      on public health?

21              MS. SARVEY:   In public health could I  
22      request that you please talk to the American  
23      Cancer Society because if you are saying that the  
24      worst health effects are southwest of the plant,  
25      there on Lines Road.   I don't know for legal fact,



1 but I know people who live in that community, and  
2 they claim they have a cancer cluster. So I think  
3 you should look at that, please. It's children.

4 Thank you -- and breast cancer.

5 HEARING OFFICER GEFTER: Okay. Would  
6 you speak specifically to staff and give them more  
7 detail on that?

8 MS. SARVEY: Sure.

9 HEARING OFFICER GEFTER: Thank you.

10 MR. GALATI: Ms. Gefter, I do not need  
11 to modify my list. I think I can still submit on  
12 declaration.

13 HEARING OFFICER GEFTER: On public  
14 health?

15 MR. GALATI: Since Mr. Sarvey isn't, as  
16 I see it, just withdrew and doesn't want to cross-  
17 examine our witness.

18 HEARING OFFICER GEFTER: The next topic  
19 is socioeconomic. I know that I think Mr. Sarvey  
20 raised the environmental justice issue regarding  
21 socioeconomic. Do you have some sort of  
22 timeframe and who your witnesses would be?

23 MR. SARVEY: We'll probably need ten  
24 minutes.

25 HEARING OFFICER GEFTER: Okay. Do you

1 intend to bring a witness, or do you want to  
2 cross-examine staff's witness?

3 MR. SARVEY: I would like to cross-  
4 examine staff.

5 MR. GALATI: Mr. Sarvey, you listed  
6 cross-examination of the applicant, as well. Is  
7 that also one where I need to bring a witness?

8 MR. SARVEY: I think we can dispense  
9 with that.

10 HEARING OFFICER GEFTER: You have a very  
11 general issue here. Do you want to be more  
12 specific related to Tesla, socioeconomics?

13 MR. SARVEY: Yeah, 57 percent of the  
14 population of Alameda County, within a six-mile  
15 radius, is minority. And I want to address the  
16 issue of impacts. It's been determined that the  
17 maximum impacts occur in Alameda County, so I want  
18 to address that issue.

19 HEARING OFFICER GEFTER: There was --  
20 I'm sorry, go ahead, Ms. Houck.

21 MS. HOUCK: Staff would just like to ask  
22 for clarification if there's anything specifically  
23 that Mr. Sarvey wants to address beyond the  
24 environmental justice analysis already in the  
25 document. Because we believe staff has conducted

1 an environmental justice analysis.

2 MR. SARVEY: Well, I think it goes to  
3 the issue of where the maximum impact is which, as  
4 the Hearing Officer has already said, is not well  
5 defined. And also just the fact that I think  
6 there's also socioeconomic impact.

7 Another problem I have with this, is it  
8 related to cumulative impact, and the fact that  
9 you're -- it has nothing to do with people of  
10 color, it has to do with siting three power plants  
11 in an area. That I feel that's a little bit too  
12 much, so I'd like to discuss and cross-examine on  
13 the socioeconomic implications of that.

14 MS. HOUCK: Each section has conducted  
15 an environmental justice analysis. And it sounds  
16 to me that Mr. Sarvey's issues are really an  
17 environmental justice issue related to public  
18 health rather than socioeconomics. And I believe  
19 we can have staff available to address that.

20 But I just want to be clear on what the  
21 issues are, because it seems it's more a public  
22 health issue.

23 HEARING OFFICER GEFTER: That's what it  
24 sounds like to me. Mr. Sarvey, if you perhaps  
25 could frame your issues for us more specifically

1 when you file your testimony. Sounds like your  
2 concerns --

3 MR. SARVEY: I would say it's related to  
4 air quality and public health, so, yeah, I believe  
5 that's correct.

6 HEARING OFFICER GEFTER: Yeah, it sounds  
7 like it's more of a public health issue. Okay.  
8 Also, with respect to socioeconomics and the  
9 project benefits, Mr. Busa mentioned at the site  
10 visit, a lot of members of the public were asking  
11 Mr. Busa about the tax benefits of the project and  
12 the impacts on schools and that sort of thing.

13 The socioeconomics section indicates  
14 that there's a one-time in-lieu school fee that  
15 the applicant would pay. But that's a one-time  
16 fee. Are there any other tax benefits that you're  
17 referring to that you would indicate to the  
18 public? And if so, could you provide that  
19 information at the evidentiary hearing?

20 MR. BUSA: Certainly, yes.

21 MR. GALATI: We'll make sure that those  
22 benefits are outlined in our testimony.

23 HEARING OFFICER GEFTER: Okay. Then the  
24 next topic is traffic and transportation. And  
25 we're trying to get through here, but spending

1 time now will save us some time later.

2 I was looking in either the Hazmat  
3 materials section or the traffic section for a  
4 condition that would specify the route for  
5 delivery of hazardous materials. And I couldn't  
6 find that route in either section. Perhaps you  
7 can find it for me, or draft a condition in the  
8 transportation section that deals with the  
9 appropriate routing of the hazardous materials to  
10 the project site.

11 In looking at the conditions that are  
12 proposed in traffic and transportation, my reading  
13 of the conditions, as a whole, is that all the  
14 conditions need to be rewritten. They're not  
15 enforceable as written. They are inconsistent.  
16 Some of them have -- verification language is  
17 included in the condition and the condition  
18 language is included in the verification.

19 Specifically in -- I mean we can start  
20 with Trans-1. It needs to be more specific when  
21 it says, it talks about the traffic control plan.  
22 And, staff, in the testimony in the staff  
23 assessment, you talk about the traffic control  
24 plan, and it has some specific items that you want  
25 to see in the traffic control plan, and in the

1 condition I think that those specific items should  
2 be identified.

3 And where you have, for example, verbal  
4 and written instructions intended to raise  
5 awareness. This is all very vague and I'd like to  
6 see more specific language in that condition.

7 Also, several places in these  
8 conditions, as in Trans-2, it states the applicant  
9 shall comply. And actually everyplace it says  
10 applicant it should say project owner. So that  
11 should be substituted in every condition.

12 I think that Trans-4 should be more  
13 specific. It talks about the applicant shall  
14 insure that federal and state regulations are  
15 observed. It should say that they are complied  
16 with. And also perhaps it should track the  
17 language of Haz-5, condition Haz-5, which talks  
18 about the types of vehicles in which hazardous  
19 materials are carried. And it's much more  
20 specific language in Haz-5.

21 And if Trans-4 is supposed to be the  
22 same as Haz-5, then the language should be the  
23 same; and it should include specifications for  
24 transporting the hazardous materials. It's not  
25 clear what is intended here.

1                   So if you could look at that --

2                   MR. GALATI: Ms. Gefter, can I say  
3 something about Trans-4?

4                   HEARING OFFICER GEFTER: Um-hum.

5                   MR. GALATI: With any modification of  
6 Trans-4 if staff could keep aware of we don't  
7 generally own the trucks that transport materials  
8 that are going to be used at the site. So I think  
9 the term insure there was either some sort of  
10 determined by a contract that we require our  
11 contractors to use, have proof of state and  
12 federal permits. As opposed to just making the  
13 project owner responsible for getting those  
14 permits because we're not the owner of the  
15 vehicles.

16                  HEARING OFFICER GEFTER: If the project  
17 owner is receiving some sort of certificates or  
18 some sort of evidence, that evidence then should  
19 be supplied to the compliance project manager.  
20 And so that language should be in the  
21 verification.

22                  MR. GALATI: On other projects what  
23 seems to have been required is that we show proof  
24 of our contract requiring our vendors to do it.  
25 And then monthly compliance reports showing the

1 ones that they have complied with that condition.

2 HEARING OFFICER GEFTER: That's correct,  
3 and I think the language of this condition should  
4 track the language that Mr. Galati's referring to.  
5 That would be better.

6 MS. HOUCK: So you want something beyond  
7 copies of the permits and licenses?

8 HEARING OFFICER GEFTER: We need copies  
9 of those. It doesn't even say in this condition  
10 that we get the copies.

11 MS. HOUCK: Okay. Under the  
12 verification it indicates that they would need  
13 that in their monthly compliance reports.

14 HEARING OFFICER GEFTER: Yes.

15 MS. HOUCK: So you would want that in  
16 the condition not in the verification?

17 HEARING OFFICER GEFTER: It would be in  
18 the verification.

19 MS. HOUCK: Okay.

20 HEARING OFFICER GEFTER: Yes.

21 MS. HOUCK: So there's something  
22 specifically beyond the permits then, and licenses  
23 required by the project owner and/or  
24 subcontractors concerning the transport of  
25 hazardous materials?



1           HEARING OFFICER GEFTER:  There is  
2       different language that we've seen in other cases  
3       regarding this.  And just track that other  
4       language.

5           MS. HOUCK:  Okay.

6           HEARING OFFICER GEFTER:  It also, I  
7       remember we talked about each and every vendor  
8       because oftentimes they may change vendors.  And  
9       then you need to get a new permit or license from  
10      the new vendor.

11          So if there's some language about each  
12      and every vendor needs to provide this to the  
13      project owner who then includes it in the  
14      compliance report.  There's --

15          MS. HOUCK:  Is there a specific case  
16      you'd like us to look at just to insure that we  
17      get the language --

18          HEARING OFFICER GEFTER:  I think we did  
19      it in the Magnolia project.

20          And then again also Trans-5, looking at  
21      that language, this is the language in the  
22      condition should actually be in the verification.  
23      And it's very vague, it says -- also it says the  
24      applicant rather than the project owner -- shall  
25      enforce a policy that all project-related parking

1 occurs in designated. What we want here is what  
2 is the policy. You know, the policy shall be.  
3 And then the enforcement of the policy is in the  
4 verification, how will they enforce it.

5 And also there's no date, there's no  
6 timeline in the verification. I'm not sure if  
7 staff wants -- if you're proposing 30 days prior  
8 to construction or 60 days prior to construction,  
9 or whether it's prior to site mobilization.

10 Okay, so you understand. Again, with  
11 the verification for Trans-6 -- I'm sorry, the  
12 language of Trans-6, you're obviously requiring  
13 the project owner to install this left-turn lane.  
14 But there's nothing in here that talks about who  
15 installs it and who pays for it. And whether  
16 that, you know, has been resolved with Alameda  
17 County. Whether we're looking for something from  
18 the County on this.

19 And then you also need a timeline and a  
20 verification.

21 Same with Trans-7; it doesn't have a  
22 specific -- again, when you're saying prior to  
23 beginning of online construction activities, this  
24 would be part of the verification. And then the  
25 construction mitigation plan. Okay, this is

1 pretty good, it's almost there. You need to put  
2 some timeline in the verification. Usually that  
3 goes at the beginning of the verification.

4 And then there's also Trans-9. Trans-9  
5 is text, but it's not a condition. It just talks  
6 about what's going to happen, but it doesn't say  
7 what the project owner has to do. So it needs to  
8 be rewritten.

9 And also the verification to Trans-9  
10 requires review and approval by the CPM and that's  
11 not in the verification.

12 MS. HOUCK: Can I ask what the concern  
13 on Trans-7 and 8 were?

14 HEARING OFFICER GEFTER: Yeah. All it  
15 is you need -- the first line, prior to beginning  
16 of onsite construction, you could just strike that  
17 and just say the project owner shall prepare, in  
18 conjunction with these agencies. And then in the  
19 verification just start it saying, at least 30  
20 days prior to construction.

21 Or actually see here, see what's  
22 confusing, too, is that the condition says  
23 construction activities, and the verification says  
24 site preparation or earth moving. So, whether  
25 it's prior to site mobilization or prior to

1 construction needs to be clear on there.

2 MS. HOUCK: So the verification says  
3 prior to earth-moving activities on Trans-8?

4 HEARING OFFICER GEFTER: On Trans-7.

5 MS. HOUCK: Okay, because I'd note that  
6 it says submit for Alameda County approval and  
7 construction mitigation plan -- okay, yeah, that's  
8 all right.

9 HEARING OFFICER GEFTER: You see? Yeah.  
10 And also you need the CPM approval on this, as  
11 well. That's not in the verification.

12 In fact, check each of the verifications  
13 because I think each of the verifications should  
14 include the CPM and it's not included in many of  
15 them.

16 Move on here. The topic of water.  
17 Water resources is the contested issue in this  
18 project. And also I have a number of people who  
19 want to address the water issue, so we're going to  
20 try to get through this.

21 The conditions that are proposed by  
22 staff in the FSA do not include the cooling  
23 process or the water supply method, or any will-  
24 serve letter requirements. And my question to  
25 staff is whether those conditions are pending

1 resolution of the issue regarding the use of  
2 wastewater.

3 MS. HOUCK: Let's see, --

4 HEARING OFFICER GEFTER: I didn't see  
5 anything --

6 MS. HOUCK: That was the conditions in  
7 the supplement? Or the conditions in the FSA?

8 HEARING OFFICER GEFTER: Conditions in  
9 the FSA. The conditions in the supplement are  
10 supplementing a lot of the environmental topics.

11 MS. HOUCK: I know it is docketed and we  
12 can submit it as an exhibit. The City of Tracy  
13 did pass a resolution indicating they are willing  
14 to provide water to the project. Given the  
15 applicant and the City of Tracy have not reached  
16 an agreement on a contract, this is staff's  
17 proposal. We believe that the City is willing to  
18 provide the water; it's just a matter of, you  
19 know, reaching an agreement with them on how that  
20 ought to be done.

21 HEARING OFFICER GEFTER: Yes. And so  
22 pending that staff hasn't drafted conditions on  
23 water supply or the cooling process or a will-  
24 serve letter requirement.

25 MS. HOUCK: Usually will-serve letters

1 are required for data adequacy purposes. And in  
2 this case, because of the staff's proposal and the  
3 applicant is not supportive of that, we again felt  
4 that the resolution from the City Council served  
5 in lieu of a will-serve letter.

6 HEARING OFFICER GEFTER: Right, I  
7 understand that. I'm asking about conditions,  
8 proposed conditions. Because those conditions, I  
9 have not seen text for conditions in the water  
10 section regarding the cooling process or the water  
11 supply or the will-serve letter.

12 MS. HOUCK: Can I have one second?

13 HEARING OFFICER GEFTER: Okay.

14 (Pause.)

15 MS. HOUCK: And staff will be able to  
16 address that at hearings.

17 HEARING OFFICER GEFTER: Yes, that's  
18 what I'm asking. Just --

19 MS. HOUCK: Okay.

20 HEARING OFFICER GEFTER: -- this needs  
21 to be addressed by the time we get to evidentiary  
22 hearing. I don't --

23 MS. HOUCK: Right.

24 HEARING OFFICER GEFTER: -- need an  
25 answer today.

1 MS. HOUCK: Okay. So we can address  
2 that at that time.

3 HEARING OFFICER GEFTER: Okay.

4 MR. MEDIATI: Tony Mediati from CEC. We  
5 do have some conditions that we put in in the  
6 addendum to require the reclaimed water.

7 HEARING OFFICER GEFTER: Okay, so  
8 we'll --

9 MS. HOUCK: In the supplement.

10 HEARING OFFICER GEFTER: Right.

11 MS. HOUCK: In the supplement.

12 HEARING OFFICER GEFTER: In the  
13 supplement.

14 MR. MEDIATI: In the supplement.

15 HEARING OFFICER GEFTER: Okay, and --

16 MR. MEDIATI: Specifically that would be  
17 soil and water-12.

18 HEARING OFFICER GEFTER: And I have that  
19 now because staff has provided it, the updated  
20 version of the conditions. So it's soil and  
21 water-12.

22 All right, what we're going to need for  
23 the hearings is information from the City of Tracy  
24 regarding their process for developing the  
25 wastewater treatment plant, when it will be

1 online. I saw some letters which indicate they  
2 expect it to be online by January 2006. We need,  
3 you know, some specific information on that.

4 The other question for the applicant is  
5 if we proceed along the schedule we're on now when  
6 would the power plant project actually be online.  
7 When do you anticipate it to be ready for  
8 commercial operation? Will FPL build Tesla by  
9 2006? That's a good question right there.

10 And then we need to address in the  
11 parties' presentations, if you can't reach  
12 agreement before we get to evidentiary hearings,  
13 we're going to end up having to discuss state  
14 water policy. We're going to need the applicant  
15 to set out your proposal for supplying water to  
16 the project. We're going to need staff to present  
17 testimony setting out your proposal.

18 We're going to need the City of Tracy to  
19 be present and available to testify, in addition  
20 to the process for developing the plant; and when  
21 it will be online. Information on supplying the  
22 water to the project and whether that can be  
23 guaranteed. And how you would guarantee that.

24 We'll also need the agreements  
25 between -- copies of agreements between the water



1 agencies and FPL regarding your plan for providing  
2 water. Because the information I have, I looked  
3 at appendix M, which was in the AFC. That's a  
4 long time ago. It was a letter that was written  
5 in 2001, I believe, which talks about some of the  
6 agreements that you made with the water agencies.  
7 And we need updated letters.

8 Also we need information from Zone 7;  
9 they recently submitted a letter. But, again,  
10 they indicated they're in the process of  
11 developing an agreement, but that agreement hasn't  
12 been reached yet.

13 So I'm going to need all those  
14 documents.

15 Also from staff, what we want to see,  
16 staff alluded to the costs of building the  
17 pipeline and using reclaimed water. And staff  
18 indicated, I believe it's at page 4.13-31 of the  
19 FSA, that building the pipeline and provision of  
20 water from the Tracy wastewater treatment plant  
21 would be comparable or equivalent to the cost of  
22 the applicant's proposed water arrangement.

23 And if that's staff's position we'd like  
24 staff to back that up with some information  
25 testimony, analysis you can provide to us.

1 MS. HOUCK: In appendix A to the water  
2 section, the water resource FSA and Tesla Power  
3 Plant water supply and cooling options, staff did  
4 a breakdown of costs and analysis. And there's  
5 several charts. There's table 3 on page 4.13-A-  
6 18.

7 HEARING OFFICER GEFTER: Dash 18. I saw  
8 that.

9 MS. HOUCK: Is there specific  
10 information in addition to what's in our appendix  
11 A that the Committee would be looking for?

12 HEARING OFFICER GEFTER: I think that in  
13 table A -- table 3, yes, I had seen this table 3.  
14 But I wanted to hear from the applicant as to your  
15 view of the information provided by staff in table  
16 3. And also we'd need the witness who put  
17 together this analysis.

18 MS. HOUCK: And staff will have those  
19 witnesses available along with the witness from  
20 the City of Tracy.

21 HEARING OFFICER GEFTER: As I understand  
22 that's one of the applicant's issues is the cost  
23 of using the wastewater.

24 MS. HOUCK: Also in staff's and  
25 applicant's prehearing conference they've

1 indicated their issue is the comparability and the  
2 availability of the water. And I just want to  
3 confirm that those are the applicant's two issues  
4 on water.

5 MR. GALATI: Yes, those are our issues.  
6 I'd like to try to frame where we are currently on  
7 water. And if it's appropriate, Ms. Gefter, ask  
8 for some Committee guidance.

9 We know that the East Altamont project  
10 was not set as a precedential project. However, I  
11 think that we all agree that many of the issues on  
12 water may be simpler on East Altamont as they are  
13 for Tesla.

14 We've been working towards developing  
15 some sort of condition that would solve this issue  
16 so we don't have to go into an abundant amount of  
17 time in hearing talking about what the costs would  
18 be, when they would be applied. Because it's an  
19 incredibly complex area.

20 We disagree with just saying we only  
21 have two issues on availability and comparable  
22 costs of the two is really -- I don't want to  
23 downplay to the Committee what that means. It's  
24 not really two issues, it's a lot of sub-issues in  
25 there as to how you calculate costs and whether

1 things are available.

2 MS. HOUCK: I guess I just wanted to  
3 clarify that the applicant was not contesting the  
4 basis for why we were recommending the reclaimed  
5 water and the state policy issues. That your  
6 issues were whether factually the water was  
7 available and at a comparable price.

8 MR. GALATI: We intend to put on  
9 evidence of the -- under the concept of  
10 availability and under the concept of comparable  
11 cost it's not possible to put on testimony without  
12 going to the policy and without discussing what  
13 the policy says and means.

14 So I don't want to give the impression  
15 that we agree all the policies apply. I don't  
16 want to give the impression that we agree that all  
17 the policies have been interpreted appropriately  
18 when I say availability and comparable costs.

19 We believe that it just makes sense to  
20 use the water if they believe it was available at  
21 a lower cost. Even at the same cost. And so what  
22 I'm trying to get at is we could go into a long,  
23 lengthy evidentiary proceeding like East Altamont  
24 did; or we could try to use what we've learned in  
25 East Altamont. And we're willing to entertain

1 discussions on a condition that said, let's say 60  
2 days prior to building a pipeline that if, in  
3 fact, everything staff has assumed with the Tracy  
4 wastewater treatment plant does come true, and  
5 we're losing that uncertainty which we have, we'll  
6 use Tracy water.

7 If that isn't the case, 60 days prior to  
8 building a pipeline, then we would use our water  
9 source. And that removes, I think, a lot of these  
10 issues. Its very similar to what East Altamont  
11 is, is if recycled water is available to it as a  
12 comparable cost, becomes available in the future,  
13 East Altamont discussion were along the lines that  
14 you have to use that.

15 We're willing to entertain those same  
16 discussions, if that saves any amount of time in  
17 hearings. We'd like some direction from the  
18 Committee whether or not we can look at East  
19 Altamont in any way, shape or form as some sort of  
20 framework to help us resolve this issue.

21 HEARING OFFICER GEFTER: What I  
22 understand you said, and correct me if I misheard  
23 you, is that you're not disagreeing with staff's  
24 analysis about using wastewater, what you're  
25 concerned about is the cost.

1           MR. GALATI: Well, let me put it this  
2 way, we're willing to compromise along the lines  
3 of East Altamont, and that we will not even talk  
4 about staff's issues. But if we're not willing to  
5 compromise along the lines of East Altamont, we  
6 want to take staff to task on every component of  
7 their analysis that deals with availability and  
8 comparable costs, because we disagree with it.

9           HEARING OFFICER GEFTER: What do you  
10 mean by following East Altamont?

11          MR. GALATI: East Altamont had a bunch  
12 of litigation along whether or not this --

13          HEARING OFFICER GEFTER: No, I don't  
14 mean that. I mean you're saying you want to use  
15 East Altamont to not get involved in all the  
16 litigation.

17          MR. GALATI: Yes, East --

18          HEARING OFFICER GEFTER: How do you want  
19 to use it?

20          MR. GALATI: East Altamont has a  
21 condition that requires them to use recycled water  
22 if that water does become actually available, as  
23 opposed to us predicting whether it will be  
24 available; and if it's at a comparable cost.

25          Staff had a concern that we would build

1 our water pipeline and then thereby build the  
2 costs so high that it wouldn't really be a  
3 meaningful test.

4 My compromise is we make that  
5 determination 60 days prior to building our  
6 pipeline, which removes that issue. So, --

7 HEARING OFFICER GEFTER: Okay, what is  
8 the applicant's position on table 3, page 4.13-A-  
9 8?

10 MR. GALATI: I would ask Duane McCloud  
11 to come on up here. I have a copy of it, Duane.  
12 And I'm not sure we can answer that question to  
13 you right now.

14 HEARING OFFICER GEFTER: Okay, well,  
15 fine, I mean that's --

16 MR. McCLOUD: What, 4.13?

17 HEARING OFFICER GEFTER: Yes, page 4.13-  
18 A-18. It's in the appendix. The appendix to the  
19 FSA.

20 You know, we can take a recess if people  
21 want to take a little five-minute break and use  
22 the restrooms. We're going to go off the record.

23 (Brief recess.)

24 HEARING OFFICER GEFTER: On the record,  
25 please.

1 MR. GALATI: Ms. Gefter, your question  
2 was specifically the table on 4.13-A-18, table 3.  
3 We do not dispute the costs listed on that table.

4 PRESIDING MEMBER GEESMAN: We talked  
5 during the break, and I'm not certain that East  
6 Altamont presents a clearly parallel set of facts  
7 here. I think it would be of benefit for us to  
8 take the evidentiary hearing time necessary to  
9 address and resolve the question of cost  
10 effectiveness and feasibility before we render a  
11 decision in this case.

12 MR. GALATI: Okay, thank you for that  
13 guidance.

14 PRESIDING MEMBER GEESMAN: Certainly.

15 MR. GALATI: In that case, Ms. Gefter, I  
16 would like to, in response to staff calling the  
17 City of Tracy witness to discuss the reclaimed  
18 water source, I need to modify my list of  
19 witnesses to include the following: Rosedale Rio  
20 Bravo, which is one of the Districts involved in  
21 our exchange; and (inaudible) Buena Vista,  
22 actually that would be Hal Crosley. Should I just  
23 submit these to you in writing?

24 HEARING OFFICER GEFTER: Yeah, why don't  
25 you send it to us in writing; have it docketed and



1 serve it on all the parties. That would be great.

2 MR. GALATI: You bet. We'll modify our  
3 witness list to include those, and to add another  
4 hour of direct.

5 HEARING OFFICER GEFTER: When you send  
6 me your amended witness list tell me how much time  
7 you need. We might need to have one day dedicated  
8 to water if you think you're going to need that  
9 much time. Yes?

10 MS. HOUCK: Is the applicant also going  
11 to provide a witness from Zone 7, because it's not  
12 clear whether they have an agreement even for Zone  
13 7 to provide the water. So I was unclear whether  
14 they actually have a secure water supply at this  
15 time.

16 MR. GALATI: Yes, we will provide a  
17 witness from Zone 7.

18 MS. HOUCK: Staff also had another issue  
19 with our getting the applicant's current witness  
20 list. Would the Committee like us to address that  
21 now?

22 The applicant has listed two water  
23 attorneys as witnesses. And staff would object to  
24 legal opinion being taken as evidence in the  
25 proceeding. If applicant would like to have oral

1 argument or submit opening briefs or include a  
2 statement of counsel in their testimony staff has  
3 no objection to those things. But we do think  
4 it's improper to take legal opinion as testimony.

5 HEARING OFFICER GEFTER: I would tend to  
6 agree with the staff's position.

7 MR. GALATI: Yeah, so would we. Even  
8 though they're legal counsel, they provided all of  
9 the background and due diligence on the Rosedale  
10 Rio Bravo source.

11 They also are going to testify to the  
12 nature of the ability to finance a project and  
13 compare that ability to finance the project using  
14 our proposed supply and staff's proposed supply.

15 That just because they're attorneys does  
16 not mean that there will be legal opinion. And I  
17 think that staff could entertain an objection if I  
18 ever crossed the line and asked them for a legal  
19 opinion.

20 But I'm going to ask them for an opinion  
21 as experts on creating deals to get water supply.

22 HEARING OFFICER GEFTER: And the  
23 relevance of that testimony?

24 MR. GALATI: We're going to show why our  
25 supply is sufficient and would support the ability

1 to finance; and why the City of Tracy's supply at  
2 this time cannot, is not. And so when I talk  
3 about the term availability it is, is it  
4 sufficient to support financing and have we been  
5 provided enough information to conduct due  
6 diligence so that we can get over all the  
7 uncertainties and risks that we see in Tracy.

8 And I need guys like these to describe  
9 to you, because it is very complex.

10 MS. HOUCK: I think staff would like  
11 that the applicant's going to provide r, sum, s  
12 demonstrating they have qualifications as  
13 financial experts.

14 We're still concerned that as legal  
15 attorneys they're going to be addressing legal  
16 issues. And, again, we don't know that the  
17 applicant's ability to finance this is relevant to  
18 the issues regarding whether this is the most  
19 appropriate water supply and whether it's  
20 available at a comparable price.

21 And we would have, again, serious  
22 concerns that these would be legal issues that  
23 they're raising. And if the Committee is going to  
24 allow the applicant to discuss issues related to  
25 their ability to finance the project, it seems

1       they should bring someone in with a business or  
2       financing background, rather than legal counsel.

3               HEARING OFFICER GEFTER: I'm still not  
4       clear on the relevance of this testimony, since  
5       you've already indicated that applicant accepts  
6       the analysis summarized in table 3, which shows  
7       what it would cost to build the pipeline and  
8       accept water from the City of Tracy.

9               The information we would need then with  
10       respect to the applicant's proposal is what it  
11       costs to get the water; and the availability of  
12       that water.

13              I don't know that we need all the  
14       discussion about what it took to make a deal to  
15       get a contract.

16              MR. GALATI: Well, table 3 makes it  
17       absolutely clear that Tracy recycled water is  
18       considerably more expensive than fresh water from  
19       our alternative. But staff's conclusions are that  
20       we must use Tracy recycled water.

21              If we are basing this on table 3, then  
22       we don't have to use Tracy recycled water. And I  
23       don't need to put on this testimony. But I need  
24       to put on the testimony to rebut staff's  
25       conclusion, using the availability argument, to

1 convince the Committee or to describe to the  
2 Committee what is the risk associated with using  
3 not only more costly alternative, but the ability  
4 to be able to secure financing.

5 That's relevant that Tracy water, in  
6 fact, is not available to us to support a  
7 financing of the project. Unless we're just going  
8 to go off table 3 and say it costs more, you don't  
9 have to use recycled water. We agree with that.

10 I thought the issue was deeper than  
11 that. That's why we're bringing these experts.

12 HEARING OFFICER GEFTER: Staff, do you  
13 have any response?

14 MS. HOUCK: Staff again still is in fear  
15 if Mr. Galati is indicating he's bringing in legal  
16 counsel to testify as to how they coordinate and  
17 conduct making deals regarding purchasing water,  
18 it seems that would be, again, legal argument and  
19 a legal basis.

20 He's not bringing in the people at  
21 Rosedale Rio Bravo to discuss the terms of the  
22 contract or how much the water's costing or a  
23 financier from Wall Street that's going to tell  
24 us, based on the information or the conditions  
25 staff's requesting, they're not going to finance a

1 project. And those seem to be different issues.

2 Staff would argue that the term  
3 comparable may be something that we need to argue,  
4 and that would be an issue for briefs potentially.  
5 And the applicant should be bringing factual  
6 information into the hearings related to their  
7 cost. And whether this water is physically  
8 available. Not attempting to introduce legal  
9 testimony and legal argument as factual evidence.

10 PRESIDING MEMBER GEESMAN: You know, as  
11 a lawyer that worked on Wall Street for 19 years,  
12 I'm not going to hold it against a financial  
13 expert that he or she was a lawyer or is a lawyer.

14 So I think we're probably best served by  
15 waiting until these folks actually show up and  
16 offer their testimony. If an objection is  
17 appropriate, I'm sure you'll file one.

18 MR. HANSMEYER: If I could provide a  
19 couple of additional comments. I'm Christopher  
20 Hansmeyer; I'm one of the lawyers we're talking  
21 about.

22 A couple of things have been raised.  
23 When you've requested that there be a witness  
24 available to really set out the proposal for the  
25 water supply plan, my office was hired two years

1       ago to start work and due diligence on identifying  
2       potential water supplies for this plant.

3               With all due respect to staff and the  
4       hard work that they've done, and they've raised a  
5       lot of interesting issues, I have over 2000 hours  
6       into this project. In those hours I would say  
7       less than 500 would qualify for what you typically  
8       call water lawyer type services.

9               My background, my education, I have a  
10      bachelors degree in resource management,  
11      hydrology, soils, water movement. My legal work  
12      was environmental law. And my professional  
13      career, prior to being a lawyer, was as an  
14      engineer and architectural design. So not only am  
15      I qualified as a lawyer, I'm qualified as a  
16      resource manager, to discuss these issues.

17              I'd also point out that before there  
18      were water consultants and staff like Tony Mediati  
19      looking into these issues, I was out identifying  
20      potential sources of water; talking to districts;  
21      reviewing impacts; looking at water movement;  
22      impacts to the Delta long before our consultants  
23      were brought on.

24              There's going to be gaps in their  
25      testimony that only I can fill. And in an effort

1 to provide the best information to both the  
2 Commissioners, the staff, the project applicant I  
3 would be indispensable to that process.

4 A water lawyer wears many many hats.  
5 Part of my job is to be a lawyer and negotiate  
6 contracts and look at risk. Part of my job is to  
7 be a resource manager. And all of the work that  
8 Tony and the water staff has done for you, I  
9 provided to this applicant. It's really a  
10 counter-point to that.

11 David Osias, he's the partner I work  
12 with, does the same thing. A water lawyer has to  
13 be an expert in the law, in state regulations, but  
14 also in plant development and issues related to  
15 that. Both of us provide those services on a  
16 daily basis to our clients.

17 HEARING OFFICER GEFTER: Do you have  
18 something to say?

19 MS. HOUCK: I'd just note that since Mr.  
20 Galati's brought up East Altamont several times  
21 that there was concern in East Altamont that the  
22 applicant in that case did have water counsel  
23 testify on legal issues.

24 So if the Committee is going to allow  
25 Mr. Hansmeyer to testify, we would just ask it be



1 very clear that it's not on legal opinion  
2 regarding his interpretation of state policy or  
3 other issues that should be in the briefs.

4 MR. HANSMEYER: And we would point to  
5 your own regulations that you've given, as the  
6 Hearing Officer, very broad authority to govern  
7 the type of testimony. And that with the  
8 assistance of staff counsel, if my testimony --  
9 and I'll tell you a little funny story -- I was in  
10 my shirt before I came in here, before I put my  
11 jacket on for the hearing. I had several nice  
12 conversations with members of the public.

13 I put my suit and tie on, came back to  
14 those same members, and I said I was a lawyer, and  
15 they physically stepped back. So, I understand  
16 the concern. I will testify in a very non-  
17 lawyerlike fashion. And you will have complete  
18 control. And if there's an objection, we will  
19 certainly address that.

20 HEARING OFFICER GEFTER: What I want to  
21 do is we need to frame what the issues are, and it  
22 sounds like, as Mr. Galati has described it, it's  
23 going to, you know, encompass a lot of information  
24 that may not be relevant to our inquiry.

25 And there are two issues here. One is

1 the cost comparability and the other is the  
2 availability of water. Those are the two issues  
3 that we're looking at, right?

4 MR. GALATI: That's correct.

5 HEARING OFFICER GEFTER: So, and then I  
6 want to know what is the relevance of cost  
7 comparability when we're looking at the  
8 environmental impacts. That would be a subtopic.  
9 Because I'm looking at environmental impacts,  
10 that's what we're mandated to look for. And our  
11 focus is not on cost so much as it is the impacts  
12 to the environment. So I want to focus on that.

13 And it sounded to me that we were  
14 planning to walk through a lot of contract  
15 negotiations and deal-making, and that's really  
16 not what I'm looking for.

17 MR. GALATI: Okay. Our position is that  
18 we believe there are no environmental impacts  
19 associated with using our water supply. We  
20 certainly can provide that evidence which we  
21 intend to do.

22 We also believe the staff assessment did  
23 not identify environmental impact associated with  
24 our water supply. But, in fact, the staff has  
25 determined that the project, in order to comply

1 with LORS, would need to comply with the state  
2 policy.

3 And so the state policy has two  
4 components, comparable costs and availability. So  
5 I thought that was where our disagreement was with  
6 staff.

7 HEARING OFFICER GEFTER: All right. I  
8 think we're going to go off the record just one  
9 minute.

10 (Off the record.)

11 PRESIDING MEMBER GEESMAN: There is  
12 concern about going into non-germane substance or  
13 an undue reliance on deal-making that may steer us  
14 away from the two points that you had identified.  
15 And I think the approach that would be preferable  
16 would be we'll let you offer your testimony, but  
17 we will be rigorous in making certain that it  
18 adheres to a strict standard of relevance before  
19 we allow it to come in.

20 MR. GALATI: I think that's fair. We'll  
21 file our written testimony, and if certain  
22 portions of it are stricken for that reason,  
23 that's -- on the concept of availability there  
24 will be testimony in our testimony -- I will  
25 separate the witnesses so that you can identify.

1 Usually I would have them all testify in one  
2 written thing, as a panel, but I will separate  
3 them so that we can look at --

4 PRESIDING MEMBER GEESMAN: I think that  
5 would be helpful.

6 MR. GALATI: But there will be testimony  
7 by both Mr. Hansmeyer and Mr. Osias on what they -  
8 - how they determined what is available.

9 PRESIDING MEMBER GEESMAN: Good.

10 MR. GALATI: And there will be testimony  
11 as to the history of what was available when they  
12 looked at the project. And then there will be  
13 testimony by others that will talk about the  
14 comparable cost.

15 PRESIDING MEMBER GEESMAN: Okay.

16 MR. GALATI: Thank you. I think that's  
17 fair.

18 HEARING OFFICER GEFTER: And we'll ask  
19 staff to present testimony on the environmental  
20 impacts, the comparable environmental impacts.  
21 And the basis for which you designed table 3. In  
22 other words, there's some summary in the FSA, and  
23 we'll need some additional information, additional  
24 testimony that will flesh out table 3 for us.

25 MS. HOUCK: Oh, okay. The additional

1 testimony, are you referring to regarding our  
2 discussion on the state water policy?

3 HEARING OFFICER GEFTER: I'm talking  
4 about the table 3, which is the cost analysis.

5 MS. HOUCK: Okay, and --

6 HEARING OFFICER GEFTER: Right. In  
7 terms of the parties' analysis of state water  
8 board policy, we're going to leave that to  
9 briefing.

10 MS. HOUCK: Thank you.

11 PRESIDING MEMBER GEESMAN: Let me  
12 reiterate that last point. We are going to leave  
13 the interpretation of the Water Resource Control  
14 Board's policy to briefing.

15 HEARING OFFICER GEFTER: Okay, I'd like  
16 to move on right now to the question of fire  
17 protection. So many people have stayed and wanted  
18 to talk about it and --

19 UNIDENTIFIED SPEAKER: -- wanted to talk  
20 about water --

21 HEARING OFFICER GEFTER: Okay, we're  
22 going to talk about water, too, but I want to talk  
23 about -- we'll go back to water -- the fire  
24 protection because there are too many people  
25 sitting here waiting. We'll go back to water.

1 I don't know whether the representative  
2 of the Fire Department is still here. There you  
3 are, okay. If you want to come forward we can  
4 talk to you a little bit.

5 I had a couple of questions on fire  
6 protection in the staff assessment at page 4.14-4.  
7 Please join us for our discussion in just a  
8 moment. I want to bring up a couple questions  
9 first.

10 There's some language in the staff's  
11 testimony that says that the East Altamont  
12 applicant has agreed to provide funds for  
13 increased emergency response for the, I guess it's  
14 the ACFD, which is, I guess, Alameda County?

15 And if that is funded it will increase  
16 the resources to respond to the Tesla Power Plant,  
17 as well.

18 I can't accept that. That's not  
19 mitigation for this project. We need Tesla-  
20 related mitigation. There's no telling whether  
21 the East Altamont Center will be built before  
22 Tesla. And each project is responsible for its  
23 own mitigation.

24 So we need to see a mitigation plan from  
25 Tesla in dealing with it. And when you're talking

1 about the ACFD, is that the Alameda County Fire  
2 Department?

3 MS. HOUCK: Yes.

4 HEARING OFFICER GEFTER: Okay. And I  
5 don't see anything here for the Tracy Fire  
6 Department. And Tracy is, at this point, it says  
7 the Tracy Fire Department is able to respond  
8 within five minutes, but the responders from  
9 Alameda County take something like 10 to 14 --  
10 what is it -- 18 minutes.

11 So it would seem to me that just reading  
12 the testimony that the Tracy Fire Department could  
13 get there first. Would you agree with that?

14 CHIEF FRAGOSO: Correct, correct.

15 HEARING OFFICER GEFTER: Correct, okay.  
16 It seems to me that there should be some Tesla-  
17 related mitigation that could assist the Tracy  
18 Fire Department to handle the additional  
19 responsibilities. And I don't know whether FPL  
20 has been in touch with the Tracy Fire Department  
21 or what's going on with that. Perhaps you would  
22 like to tell us what's going on?

23 CHIEF FRAGOSO: Well, basically, I think  
24 what Alameda County is doing is waiting on what  
25 the results are going to be from both evidentiary

1       hearings and what the recommendations are going to  
2       be from the Commission.

3               At that point -- they haven't committed,  
4       except for the last meeting they said that they  
5       would be willing to sit down and negotiate  
6       whatever the outcome would be, but they wanted to  
7       wait and see what results would be at this time.

8               HEARING OFFICER GEFTER:   Okay.   What is  
9       the Tracy Fire Department's position at this  
10      point?

11              CHIEF FRAGOSO:   Well, our position  
12      basically is we do acknowledge that this is  
13      Alameda County's jurisdiction.   And so much so by  
14      about 1000 feet.

15              We are three and a half miles from the  
16      site.   And because we are a public entity  
17      providing emergency services we've always want to  
18      make it clear that should our services not be  
19      rendered that the public, as well as the  
20      applicant, knows ahead of time that, unlike air  
21      quality, we do stop at the light.   And whether it  
22      be 1000 feet or 10,000 feet, we will stop and we  
23      will return, should we not be included in any type  
24      of mitigation.

25              The majority of our department is a fire



1 protection district in which the residents and  
2 property owners do pay a specific property fire  
3 protection fee. We're not obligated by law or any  
4 agreements to provide emergency services other  
5 than to the people we're paid to protect.

6 And basically what the Department's  
7 stance is at this time, should our services not be  
8 rendered and agreed upon, that we will not be  
9 called in the future, we can accept that. And we  
10 will not provide fire protection or mutual aid or  
11 automatic aid services to Alameda County or any  
12 other agency who would be providing that unless  
13 everybody sits down at this time and helps us  
14 mitigate whatever impact that would be in the  
15 future.

16 HEARING OFFICER GEFTER: So, in other  
17 words you don't have a mutual aid agreement with  
18 the Alameda County Fire Department?

19 CHIEF FRAGOSO: No, actually we do.

20 HEARING OFFICER GEFTER: You do.

21 CHIEF FRAGOSO: But because early on in  
22 the East Altamont hearings it was actually Alameda  
23 County who chose to not include us into the  
24 negotiation process, is for a time being we  
25 terminated our agreements with Alameda County

1 because we were providing an extensive amount of  
2 mutual aid that was basically one-sided because of  
3 our location in the area.

4 Alameda County's fire station nearest  
5 location right now is out of downtown Livermore.  
6 Their mitigation basically puts them a little bit  
7 closer towards the bottom of the Altamont. Their  
8 second engine company comes from as far as San  
9 Ramon or the Lab under a mutual aid agreement.  
10 And it still doesn't serve any faster response  
11 time than what we could provide because of our  
12 location.

13 And basically that's what we can offer;  
14 that's the best results we can offer. Any  
15 mitigation basically we would be looking for would  
16 be probably in equipment basically to increase the  
17 level of services to help provide basically the  
18 mitigation.

19 Our biggest problem is most of the  
20 hazardous chemicals and products that are going to  
21 be brought into the plant most likely will be  
22 traveling through our fire district, so any future  
23 emergencies aren't exactly kept within the  
24 boundaries of the plant, itself. We still would  
25 be faced with whatever is coming down the

1 highways.

2 HEARING OFFICER GEFTER: That's another  
3 thing that I raised earlier which is I didn't see  
4 a route for hazardous materials in any of the  
5 conditions. And that's something that the  
6 applicant and staff and the City and the Fire  
7 Department have to come to terms on, which is  
8 what's the best route for moving those hazardous  
9 materials to the power plant site. And usually we  
10 do have the fire department participating in that  
11 discussion.

12 One thing you mentioned to me is that,  
13 you know, during discussions with East Altamont  
14 the Tracy Fire Department was excluded from those  
15 discussions. Now that's a different case; that's  
16 a different project. Here we have FPL as the  
17 applicant. And what I'd like to see is some sort  
18 of agreement between the FPL applicant, this  
19 project, and the Fire Department in Tracy. That's  
20 what we're talking about right now.

21 And, you know, I don't know where the  
22 Alameda County Fire Department weighs in on this.  
23 I saw a letter from them recently where they  
24 indicated that they had jurisdiction. They could  
25 make an arrangement with the FPL applicant, as

1 well.

2 But I'd like to see some sort of working  
3 agreement between the Tracy Fire Department and  
4 the Tesla applicant, because typically what I look  
5 for is, you know, a project-related mitigation.  
6 And I don't know where we are with that. Perhaps  
7 Mr. Galati would like to comment?

8 MR. GALATI: Actually I would like to  
9 comment. I think there's much more to this story  
10 than what you may be reading in the staff  
11 assessment.

12 The project has an agreement with  
13 Alameda County to provide project mitigation for  
14 fire. Staff found that the Alameda County  
15 response time was adequate. There has been an  
16 ongoing fight between the City of Tracy and  
17 Alameda County on who's going to provide what  
18 service. We don't know the outcome of that fight.  
19 It has nothing to do with our project. It has to  
20 do with lots of things.

21 We went to the people who have to  
22 respond to us. The City of Tracy doesn't have to  
23 respond. They terminated their agreement at least  
24 some point in time where there was some -- now,  
25 they may have that agreement back in.

1           What I think is probably appropriate is  
2       for us to also have Alameda County Fire Department  
3       here during this topic and find out. We're  
4       willing to do what's necessary to mitigate our  
5       impacts, but I don't think that we can solve the  
6       rift between the City of Tracy and Alameda County.

7           HEARING OFFICER GEFTER: And that's not  
8       what I'm asking you to do. I'm looking at the  
9       actual information that's provided to us. And it  
10      says to me that Tracy can respond in five minutes,  
11      whereas Alameda can respond in 18 minutes. If  
12      there's a fire you want the first responder to be  
13      the closest fire station, right?

14          MR. GALATI: I don't think that is the  
15      criteria. We have onsite fire protection; we will  
16      be providing first response onsite. And staff's  
17      conclusions in understanding that, under made the  
18      conclusions, and we agreed, that Alameda County  
19      can respond in an appropriate time.

20          If the City of Tracy wasn't there, if  
21      they weren't five minutes away, we'd still be  
22      appropriately protected by Alameda County Fire  
23      District.

24          HEARING OFFICER GEFTER: Staff.

25          MS. HOUCK: We will have our witnesses

1 available to address all of these questions. And  
2 I did receive an email from our witness asking if  
3 we wanted to have Chief McCammon from Alameda  
4 County available. And it seems it may be  
5 appropriate to have him attend the hearings as  
6 well, if the Committee would like to address some  
7 of the issues that staff and the Alameda County  
8 Fire Department and FPL have discussed regarding  
9 this project's mitigation in fire protection  
10 issues.

11 HEARING OFFICER GEFTER: I also would  
12 like to, before we get to evidentiary hearings,  
13 because we might be in the same place that we are  
14 tonight when all the witnesses come in and try to  
15 discuss this.

16 And it is not our role to try to resolve  
17 the issues between Alameda County and Tracy Fire  
18 Department. That's not our role. Our role is to  
19 make sure that if there is a fire or some other  
20 emergency event at the plant, that response time  
21 is short and that the fire department that  
22 responds has adequate equipment to deal with the  
23 situation.

24 And I am also concerned about the  
25 cumulative impact analysis that appears in staff's

1 FSA at page 4.14-11. There's going to be a large  
2 buildout over the next 25 to 30 years, likely  
3 projects, a large buildout of residential and  
4 other industrial development in this area.

5 And if all you had is the Alameda County  
6 responder, which is 18 minutes away, and you have  
7 the Tesla Plant five minutes away trying to deal  
8 with other emergencies, if there's an emergency at  
9 the power plant site, I think we need to include  
10 some mitigation discussion and some actual  
11 mitigation to deal with the buildout. It's not a  
12 speculative buildout; we know there will be  
13 buildout. And so I didn't see a good analysis at  
14 this point. I hope to see that in your testimony.

15 So, before we get to evidentiary  
16 hearings I would encourage the Tesla applicant to  
17 work with the Tracy Fire Department. And I don't  
18 know whether that steps on the jurisdiction of  
19 Alameda County or not, but we have a fire  
20 department that is available five minutes away.  
21 And that is a much better response time than 18  
22 minutes. And I don't know if there's a way to  
23 resolve that, but I would like to encourage the  
24 parties to deal with it.

25 I know there are a lot of members of the

1 public who would like to speak on this. It's  
2 getting late, so maybe if one or two people can  
3 express the concerns of your neighbors?

4 MR. VIEIRA: My name's John Vieira. My  
5 address is 19700 South Lammers Road. And I'm  
6 currently the Chair of the Tracy Rural Fire  
7 Protection District.

8 You have to realize that it's not just a  
9 matter of we'll throw them a few dollars in the  
10 beginning. This is going to be an ongoing  
11 situation.

12 It costs money not only to keep our  
13 equipment going; we may need some special  
14 equipment to take care of this particular problem.  
15 We may have to have -- I'm sure we'll have to have  
16 some special training for the firemen because  
17 fighting a gas fire is not going to be the same as  
18 fighting a house fire.

19 A lot of different things, a lot of  
20 different hazardous materials is going to cause us  
21 to have special training for the people. And  
22 we're probably going to need some apparatus and  
23 some protective clothing maybe that we don't  
24 currently need.

25 So, it's going to take men; it takes a



1 lot of dollars to run a fire department. We were,  
2 because of just a good neighbor policy, we were  
3 trying to help Alameda County for a lot of years  
4 by responding to their fires, because their fire  
5 stations are so far away. We found that 30  
6 percent of our calls were being made to Alameda  
7 County and we told them we're not made of money  
8 over here, we could use a little help. If you  
9 could at least pay the cost of doing business, if  
10 you could reimburse us that much, we'll continue  
11 doing the job. We're happy to help any way we  
12 can.

13 But we can't cause 30 percent of our  
14 calls to be to your county and not be reimbursed  
15 anything, because we're in dire straits when it  
16 comes to finance, and we just can't keep throwing  
17 the taxpayers' money in San Joaquin away.

18 If you feel that they can take good care  
19 of you, do something to keep us, you know, hold us  
20 harmless, let them take care of you. During the  
21 commute hour I'd like to see anybody get from  
22 Livermore to Tracy in 18 minutes. I'd love to see  
23 it. And their commute hour lasts about six, seven  
24 hours a day.

25 So if we can make it in five minutes and

1       they can make it in 18 off-commute-hour, who do  
2       you want to talk to? Just leave it at that.

3               I'd like -- this doesn't have to do with  
4       fire service, but I heard you telling the  
5       gentleman a little while ago, maybe you can have a  
6       water truck when you're building the plant to keep  
7       the dust down. Maybe I can alleviate your worries  
8       about dust. A very wise old man who spent his  
9       life out in the dirt all the time, out in the wide  
10      open spaces once told me the reason that the wind  
11      blows and we have dust is to take the fertile  
12      valley soils up into the forests. But don't  
13      worry, because when it comes time for the rains,  
14      they all wash back down into the valleys again.

15              So, there's a reason for dust. Don't  
16      stop all the dust, because there's a reason for  
17      it. If all those forests die you won't have the  
18      paper that you're working with. You'll have to  
19      keep a lot of things up here.

20              Thank you.

21              HEARING OFFICER GEFTER: Okay, thank  
22      you. All right.

23              MS. SARVEY: Susan Sarvey, CACLE. We'd  
24      like to ask that one of the conditions be that our  
25      Fire Department be reimbursed for fuel, manpower

1 and maintenance. We would like to remind you that  
2 if you do not have a medical response in under ten  
3 minutes you are brain-dead if you are not stiff.

4 I would hope that FPL would want their  
5 employees to be workable and alive, so they would  
6 want someone there in five minutes.

7 I am in the process right now of working  
8 to establish a foundation for a hazmat in confined  
9 space rescue for the Tracy Fire Department. And  
10 we would appreciate anybody who would like to join  
11 hands and help us in the pursuit of this, because  
12 you will have confined space issues, and you will  
13 require a hazmat response.

14 And in relation to the argument about  
15 this being about Alameda County, if you have an  
16 explosion in your pipeline, if you have a fire in  
17 your pipeline, if you have a spill at your power  
18 plant, the immediate recipient of this problem  
19 will be the City of Tracy. And if you are not  
20 going to allow our fire department to protect us,  
21 then you must accept full liability for all  
22 illness, property that is burned, and damage that  
23 is incurred by our city. And if it's a high-wind  
24 day, you're talking a big town could go up in  
25 flames. I don't think you want that, and I know

1 we don't. We love our town.

2 And we have a very good fire department;  
3 and they've already started going to training  
4 because they know you are coming, and the peaker  
5 plant is already here. But in order for us to  
6 keep growing and educating ourselves and be able  
7 to respond correctly we need people like you that  
8 have some money and have a large percentage of the  
9 problem to step up to the plate and do the morally  
10 correct thing for our community.

11 Thank you.

12 HEARING OFFICER GEFTER: We're going to  
13 move on unless applicant or staff have any other  
14 questions or any comments. Okay.

15 I note, Ms. Sarvey, you had mentioned  
16 that people have comments on water.

17 MS. SARVEY: (inaudible).

18 HEARING OFFICER GEFTER: If somebody can  
19 summarize the comments so we don't have to have a  
20 whole bunch of people coming up right now.

21 MS. SARVEY: Susan Sarvey.

22 HEARING OFFICER GEFTER: Okay.

23 MS. SARVEY: I would like to remind  
24 everyone that at the East Altamont hearing  
25 Commissioner Keese specifically said East Altamont

1 is not a precedent for either water or air.

2 They keep talking about East Altamont,  
3 the way that decision is written right now they  
4 have a recycled water agreement that lists an  
5 agency that owns no recycled water. So it's  
6 totally false to even look at anything East  
7 Altamont is discussing.

8 And on the news last night, on channel  
9 3, they were discussing how they are concerned  
10 that we are now entering a drought, because we've  
11 had such intense heat for 17 days. And the snow  
12 melt is being impacted adversely by this intense  
13 ongoing heat.

14 Fresh water is needed to drink and fresh  
15 water is needed to grow food. And fresh water,  
16 regardless who has it, needs to be saved for the  
17 people and the farmers. And if they cannot see  
18 how they can accept recycled water from Tracy,  
19 when Tracy has told them, to my horror, that they  
20 will give them free recycled water for 30 years in  
21 exchange for building the pipeline, I don't know  
22 what a sweetheart deal is.

23 Water is going to be like gold and it's  
24 going to be that way very very soon. You've got  
25 to save that fresh water. We're entering a

1 drought potentially. They're already talking  
2 about it. We need that water for our farmers and  
3 for our people. And if they are so averse to  
4 building a pipeline when they are going to get  
5 free recycled water for 30 years, then let them  
6 look at dry cooling.

7 Thank you.

8 HEARING OFFICER GEFTER: Thank you.

9 MR. WILLIAMS: I have a public comment  
10 form here from Mr. Edmundo Gandarilla. And he's  
11 also in favor of recycled water being used at the  
12 project.

13 I would also note that he came in right  
14 at the end of the public health discussion and his  
15 form has indicated a concern about the Hispanic  
16 population in and around -- or the minority  
17 people, particularly Hispanic, around the area and  
18 the proposed project.

19 And I'm going to direct him to Ms.  
20 Mendonca because there might be a need at later  
21 hearings for an interpreter.

22 HEARING OFFICER GEFTER: Oh, okay.

23 Thank you.

24 I have a couple questions for staff when  
25 we get into the engineering section. And, again,

1       these don't need to be answered right now, but I  
2       just want some clarification in the record. And  
3       these are topics that are not disputed. So that's  
4       why I wanted to bring the question up now.

5               Power plant efficiency, page 5.3-2, my  
6       question is why is staff still comparing new power  
7       plants with typical 1960s era utility plants,  
8       rather than looking at modern 21st century  
9       technology. Because there are several new plants  
10      already online in California and around the  
11      country in the U.S.

12             So why are we still, in doing the  
13      analysis why is staff just always comparing  
14      efficiency to old utility plants? Seems to me the  
15      analysis needs to be updated. And I'd like to see  
16      that happen in this case to start with.

17             And the other question, again, too, is  
18      why is staff continuing to say that G&H class  
19      turbines have been -- which are referenced in the  
20      efficiency discussions for the last ten years of  
21      looking at power plants, and yet staff's  
22      conclusion is always that these turbines are not  
23      proven technology. Isn't it time to move on to  
24      another analysis?

25             So, I'm just trying to ask staff to kind

1 of move on in terms of their analysis. I find  
2 these analyses are not complete.

3 And then at page 5.3-6 regarding the  
4 issue of the natural gas supply in California,  
5 staff indicates that there is still a robust  
6 natural gas supply in California. And I'm  
7 wondering how that is consistent with the most  
8 recent staff report on natural gas supply. So,  
9 again, we'd like to see some updates to this  
10 analysis. This analysis may come from the PSA and  
11 needs to be updated.

12 And then, again, trying to finish  
13 quickly, on transmission system engineering, on  
14 page 5.5-1, and -- okay, this is actually for both  
15 the applicant and the staff, 5.5-1. It talks  
16 about how the Tesla location will provide  
17 substantial additional necessary power in northern  
18 California. And it's a strategic central junction  
19 in the California electric grid.

20 And, again, this may have been written  
21 awhile back. Is this still an accurate statement,  
22 given the context of the Tracy Peaker Plant, the  
23 East Altamont Plant, the Russell City, San Joaquin  
24 and the Ripon project? We have several projects  
25 that are being proposed and built in the Central



1 Valley, and whether this statement is still  
2 accurate. And I'd like the applicant to address  
3 that at hearings.

4 And in addition, PG&E's system studies  
5 assumed 2004/2005 conditions. And I think the  
6 study may have done about in 2001, which is about  
7 two years ago. So I wonder if these studies need  
8 to be updated and look more into the future,  
9 talking about 2006/2007 conditions. That's  
10 something for both staff and applicant's witnesses  
11 to look at for us.

12 And then finally, real quickly, the  
13 alternatives analysis that staff prepared at page  
14 6-1. It wasn't clear to me why staff chose four  
15 alternative sites that were not the sites that  
16 were used by the applicant in the applicant's  
17 alternatives analysis. And it wasn't clear why  
18 staff chose those four alternative sites; and also  
19 what staff's final conclusion was.

20 Because it seemed to me in the last  
21 chart, there's a table at the end of the section  
22 where staff compares the four alternatives. And  
23 it looks like the alternatives have pros and cons,  
24 but none of the -- the actual conclusion of staff  
25 isn't clear. It looks like those alternatives are

1 just as good as the proposed site.

2 And I'm wondering, you know, if staff  
3 could clarify for us what staff's conclusion is on  
4 the alternatives, looking at those four different  
5 sites that they analyzed and compared.

6 And, again, the applicant certainly can  
7 comment on those issues, as well.

8 And so at this point we've gone through  
9 the topics. What we need to do is talk about a  
10 schedule for evidentiary hearings. And at this  
11 point I have indicated to the applicant and to the  
12 staff and to Mr. Sarvey what the dates are for  
13 evidentiary hearings that we have available.

14 And those dates are September 9th, 10th,  
15 11th, 15th, 18th and 19th. I don't believe we're  
16 going to need all those dates. I'd like to focus  
17 in on three to four dates, the fourth date being a  
18 backup date.

19 And also talk about where the hearings  
20 should be conducted. Whether all of the hearings  
21 need to be in Tracy, or whether the hearings on  
22 the uncontested issues could be in Sacramento via  
23 teleconference. So I'd like to get the parties'  
24 input on that. We'll start with Mr. Galati. Pick  
25 on you first.

1 MR. GALATI: Can you start with the  
2 staff first?

3 HEARING OFFICER GEFTER: Start with you  
4 first.

5 MR. GALATI: We want the earliest dates  
6 possible; we'll take the 9th, 10th and 11th.

7 HEARING OFFICER GEFTER: Okay. And  
8 staff?

9 MS. HOUCK: The 9th, 10th and 11th are  
10 fine with staff.

11 HEARING OFFICER GEFTER: Okay. Mr.  
12 Sarvey?

13 MR. SARVEY: Yeah, I'm fine with those  
14 dates, too. I still had some other issues we  
15 haven't discussed, but --

16 HEARING OFFICER GEFTER: Okay, we'll --

17 MR. SARVEY: -- I'm fine with that.  
18 And, yeah, I don't have any problem with those  
19 dates. I'd like to have all the hearings in Tracy  
20 if possible.

21 HEARING OFFICER GEFTER: Even those on  
22 uncontested issues?

23 MR. SARVEY: Yeah, I'd like to have all  
24 the hearings in Tracy if possible, but I  
25 understand the constraints.

1 HEARING OFFICER GEFTER: Okay, and I  
2 think the Air District representatives have left,  
3 have they both? We need to, if the staff and  
4 applicant can check and make sure that the Air  
5 District representatives will be available on  
6 either 9th, 10th and 11th, or we'll pick a day the  
7 following week as our backup date. Sorry?

8 MR. CASWELL: Was that 9th, 10th and  
9 11th?

10 HEARING OFFICER GEFTER: Yes.

11 MR. CASWELL: That's good.

12 HEARING OFFICER GEFTER: The 9th, 10th  
13 and 11th of September. And then we have three  
14 days in the following week; and we can use one of  
15 those days as a backup. And we need to make sure  
16 that our air quality witnesses are available.

17 It seems that the hearing on water and  
18 air will be -- both of those will take a lot of  
19 time. So, I think we may have to schedule the  
20 bulk of each day for, you know, one day on air,  
21 one day on water, and then fill in with the other  
22 topics on the -- you know, the shorter topics.

23 MS. HOUCK: Could we schedule public  
24 health and air at the same time, since they  
25 overlap?

1 HEARING OFFICER GEFTER: Yes. And then,  
2 Mr. Sarvey, you said you had a couple of other  
3 topics or issues that you'd like to mention?

4 MR. SARVEY: Yeah, I didn't really get  
5 to weigh in too much on water at all, and I wanted  
6 to agree with you about the environmental cost  
7 being factored into the cost of this water.

8 And I will recommend that -- I have four  
9 letters here, one from the Contra Costa Water  
10 District, Ms. Lisa Helm. And they're recommending  
11 using recycled water. Janice Gand, Department of  
12 Fish and Game, recommending recycled water.  
13 Regional Water Quality Board recommending water;  
14 and National Oceanic and Atmospheric  
15 Administration recommending recycled water.

16 And I think perhaps maybe some witnesses  
17 from those organizations would be appropriate to  
18 define environmental costs of using fresh water.  
19 And the implications of that on that state. I  
20 feel you brought a very valid issue forward, and  
21 that was my issue in water, was the environmental  
22 costs need to be quantified.

23 The other issue I had, we talked earlier  
24 about socioeconomics, and Mr. Boyd and I -- I  
25 haven't talked to Mr. Boyd about his preconference

1 statement here, but in socioeconomics he and I had  
2 agreed that Lynn Brown and Maurice Campbell of  
3 Bayview Hunters Point would be testifying under  
4 socioeconomics.

5 HEARING OFFICER GEFTER: All right, we  
6 would have to have all of the witnesses'  
7 qualifications filed, along with their testimony.

8 MR. SARVEY: Of course we'll do that.

9 MR. GALATI: If I may interject, it  
10 appeared that your issue on socioeconomics was  
11 really an issue on public health, was on the  
12 environmental justice issues. So neither staff  
13 nor the applicant were planning on bringing any  
14 witnesses for socioeconomics. If the issue is  
15 environmental justice and the effect on the  
16 community in air quality and public health, those  
17 ought to be the sections in which we handle it.

18 MR. SARVEY: Well, I'll discuss it with  
19 Mr. Boyd, but he had clearly stated in his  
20 preconference statement he had wanted to proffer  
21 Lynn Brown and Maurice Campbell, so I'll just have  
22 him contact the Hearing Officer and he can explain  
23 his point of view on that. But we had both agreed  
24 that we would sponsor those witnesses.

25 HEARING OFFICER GEFTER: Okay. We need

1 to hear from you very shortly on that. And if  
2 you're going to contact me with that information  
3 you need to contact all the parties.

4 MR. SARVEY: Immediately, sure. Thank  
5 you.

6 HEARING OFFICER GEFTER: Okay, and you  
7 have the email addresses for everybody.

8 MR. GALATI: I'd also like to point out  
9 that Mr. Boyd's presence, not being here to  
10 discuss a prehearing conference which is mandatory  
11 on all parties to come, I don't believe that Mr.  
12 Boyd should dictate whether or not I have to bring  
13 a live witness, or staff has to bring live  
14 witnesses on socioeconomics. The time to talk  
15 about it is now. And without understanding the  
16 issues on socioeconomics, I think that it's  
17 difficult for us to plan.

18 MS. HOUCK: Staff would concur with  
19 applicant's comments. We're not sure how to  
20 address Mr. Boyd's prehearing conference  
21 statement. He has several witnesses in many  
22 different areas of issue that I don't believe have  
23 been raised throughout this proceeding and  
24 workshops or other avenues. And we would just  
25 like direction from the Committee on how to deal

1 with those issues.

2 HEARING OFFICER GEFTER: We tend to  
3 agree with both Mr. Galati and Ms. Houck on that.  
4 We haven't heard from Mr. Boyd at all, and he  
5 hasn't clarified what his issues are. And he was  
6 expected to attend tonight's session because he's  
7 a party. All the other parties have attended.  
8 So, we're going to look very skeptically upon his  
9 request to present witnesses where he hasn't  
10 indicated what the issues are.

11 And that information will be passed on  
12 to him, Mr. Sarvey, you're taking that  
13 responsibility upon yourself. And we'll also have  
14 the Public Adviser contact him, as well.

15 Ms. Sarvey.

16 MS. SARVEY: Susan Sarvey. Mr. Boyd  
17 called me at 4:30 to let me know that he was very  
18 sorry he could not attend. They were taking him  
19 to the doctor, he was sick, so.

20 HEARING OFFICER GEFTER: Thank you for  
21 that.

22 At this point we want you to know the  
23 Committee is going to issue a hearing order that  
24 will schedule the evidentiary hearing dates and  
25 the locations. And we'll establish a briefly



1 schedule based on today's discussion. And the  
2 briefing schedule will -- we'll expect briefing  
3 after the hearings, and we'll pen that after we  
4 look at how the schedule plays out.

5 If there are any other comments or --  
6 we're going to try to wind up. Mr. Williams, the  
7 Public Adviser, may have some comments for us.

8 MR. WILLIAMS: No further comments. I  
9 would just indicate that the comments that came in  
10 on the comments forms will get docketed.

11 HEARING OFFICER GEFTER: Okay, thanks.  
12 Mr. Galati.

13 MR. GALATI: The last comment that we  
14 want to make has to do with the schedule and has  
15 to do with this project filed its application in  
16 October of 2001. It was data adequate in January  
17 of 2002. It is extremely important for us and we  
18 would like to be in the position to have a  
19 decision at the end of this year.

20 We realize that we're coming down to the  
21 end, that's why we proposed a very aggressive  
22 hearing schedule. And we are willing to propose a  
23 very aggressive briefing schedule to accommodate  
24 such a request.

25 One of the reasons we've tried to narrow

1 the issues on water with a condition. One of the  
2 other areas, we hope to narrow the issues further  
3 on air quality is to not have to have the  
4 continued iteration that happened in East  
5 Altamont.

6 One other thing that I just feel  
7 obligated to comment is while Commissioner Keese  
8 made comments about East Altamont not setting a  
9 precedence, we've been told consistently  
10 throughout this project that our delays are due to  
11 waiting for what happens in East Altamont.

12 And now we're at a position where we  
13 have an idea of what's happening on East Altamont,  
14 and we think that we ought to build upon that, as  
15 opposed to starting over. That would be our only  
16 comment along the lines. We're not asking that  
17 you don't look at the evidence, what we're asking  
18 is can we not repeat some of the things in East  
19 Altamont that are clearly applicable to the Tesla  
20 project.

21 MS. HOUCK: And staff would just ask the  
22 Committee to keep in mind that some of the issues  
23 that will be briefed will be fairly complex and we  
24 would not want to have too expedited a schedule.  
25 We don't expect anything more lengthy than would

1 typically be ordered in a case like this. And we  
2 would want to have transcripts available in time  
3 to review those prior to filing briefs.

4 HEARING OFFICER GEFTER: Right. And  
5 typically when we issue a scheduling order we  
6 would indicate that it would be so many days after  
7 receipt of the transcripts, because often it takes  
8 awhile to get the transcripts.

9 Mr. Sarvey, do you have a comment?

10 MR. SARVEY: As being one of the parties  
11 that sat through the East Altamont hearings, I  
12 wouldn't want to rush the briefing schedule. And  
13 I would humbly request or not request but advise  
14 that you schedule more hearing dates.

15 Thank you.

16 HEARING OFFICER GEFTER: Okay, thank  
17 you. All right, if there are no other comments  
18 the hearing is adjourned.

19 (Whereupon, at 9:36 p.m., the prehearing  
20 conference was adjourned.)

21 --o0o--  
22  
23  
24  
25

## CERTIFICATE OF REPORTER

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